4-1-1. Short title.

This title shall be known and may be cited as the "Utah Agricultural Code."

Enacted by Chapter 2, 1979 General Session

4-1-2. Construction.

This code shall be liberally construed and applied to promote and effectuate its policies and purposes.

Enacted by Chapter 2, 1979 General Session

4-1-3. Principles of law and equity applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Enacted by Chapter 2, 1979 General Session

4-1-3.5. Procedures -- Adjudicative proceedings.

The Department of Agriculture and Food and its divisions shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

4-1-4. Code enforcement -- Inspection authorized -- Condemnation or seizure -- Injunctive relief -- Costs awarded -- County or district attorney to represent state -- Criminal actions -- Witness fee.

(1) To enforce a provision in this title, the department may:

(a) enter, at reasonable times, and inspect a public or private premises where an agricultural product is located; and

(b) obtain a sample of an agricultural product at no charge to the department, unless otherwise specified in this title.

(2) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry to the premises to inspect or obtain a sample.

(3) (a) The department is authorized in a court of competent jurisdiction to:

(i) seek an order of seizure or condemnation of an agricultural product that violates this title; or

(ii) upon proper grounds, obtain a temporary restraining order or temporary or permanent injunction to prevent violation of this title.

(b) The court may not require a bond of the department in an injunctive proceeding brought under this section.

(4) (a) If the court orders condemnation, the department shall dispose of the agricultural product as the court directs.

(b) The court may not order condemnation without giving the claimant of the agricultural product an opportunity to apply to the court for permission to:

(i) bring the agricultural product into conformance; or

(ii) remove the agricultural product from the state.

(5) If the department prevails in an action authorized by Subsection (3)(a), the court shall award court costs, fees, storage, and other costs to the department.

(6) (a) Unless otherwise specifically provided by this title, the county attorney of the county in which the product is located or the act committed shall represent the department in an action commenced under authority of this section.

(b) The attorney general shall represent the department in an action to enforce:

(i) Chapter 3, Utah Dairy Act; or

(ii) Chapter 5, Utah Wholesome Food Act.

(7) (a) In a criminal action brought by the department for violation of this title, the county attorney or district attorney in the county in which the alleged criminal activity occurs shall represent the state.

(b) Before the department pursues a criminal action, the department shall first give to the person it intends to have charged:

(i) written notice of its intent to file criminal charges; and

(ii) an opportunity to present, personally or through counsel, the person's views with respect to the contemplated action.

(8) A witness subpoenaed by the department for whatever purpose is entitled to:

(a) a witness fee for each day of required attendance at a proceeding initiated by the department; and

(b) mileage in accordance with the fees and mileage allowed a witness appearing in a district court of this state.

Amended by Chapter 156, 2008 General Session

4-1-5. Suspension or revocation of license or registration -- Judicial review -- Attorney general to represent department.

(1) If the department has reason to believe that a licensee or registrant is or has engaged in conduct that violates this title, it shall issue and serve a notice of agency action.

(2) The commissioner, or the hearing officer designated by the commissioner, may suspend or revoke a person's license or registration if the commissioner or hearing officer finds by a preponderance of the evidence that the person is engaging, or has engaged, in conduct that violates this title.

(3) (a) Any person whose registration or license is suspended or revoked under this section may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceedings is in the district court in the county where the alleged acts giving rise to the suspension or revocation occurred.

(4) The attorney general shall represent the department in any original action or appeal commenced under this section.

Amended by Chapter 161, 1987 General Session

4-1-6. Fees and late charges.

If an annual registration, license, or other fee is imposed under any chapter of this code, it shall be determined by the department pursuant to Subsection 4-2-2(2). If the renewal of the registration or license is conditioned, among other things, upon the payment of a renewal fee on or before a specified date, the department shall charge and collect the renewal fee and a late fee on any license or registration which is renewed after the date specified for renewal in the applicable chapter. The renewal fee and late fee shall be determined by the department pursuant to Subsection 4-2-2(2).

Amended by Chapter 130, 1985 General Session

4-1-7. Severability clause.

If any provision of this code or the application of any such provision to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Amended by Chapter 378, 2010 General Session

4-1-8. General definitions.

Subject to additional definitions contained in the chapters of this title which are applicable to specific chapters, as used in this title:

(1) "Agriculture" means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.

(2) "Agricultural product" or "product of agriculture" means any product which is derived from agriculture, including any product derived from aquaculture as defined in Section 4-37-103.

(3) "Commissioner" means the commissioner of agriculture and food.

(4) "Department" means the Department of Agriculture and Food created in Chapter 2, Department - State Chemist - Enforcement.

(5) "Dietary supplement" has the meaning defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(6) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(7) "Organization" means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(8) "Person" means a natural person or individual, corporation, organization, or other legal entity.

Amended by Chapter 324, 2010 General Session

4-1-9. Growing or storing food for personal or family use.

(1) As used in this section, "family food" means food owned by an individual that

is intended for the individual's consumption, or for consumption by members of the individual's immediate family, that:

(a) is legal for human consumption;

(b) is lawfully possessed; and

(c) poses no risk:

(i) to health;

(ii) of spreading insect infestation; or

(iii) of spreading agricultural disease.

(2) Family food that is grown by an individual on the individual's property is not subject to local or federal regulation if growth of the family food:

(a) does not negatively impact the rights of adjoining property owners; and

(b) complies with the food safety requirements of this title.

(3) A government entity may not confiscate family food described in Subsection (2) or family food that is stored by the owner in the owner's home or dwelling.

(4) If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this section shall be given effect without the invalid provision or application. The provisions of this section are severable.

Enacted by Chapter 401, 2012 General Session

4-2-1. Department created.

There is hereby created within state government the Department of Agriculture and Food which is responsible in this state for the administration and enforcement of all laws, services, functions, and consumer programs related to agriculture as assigned to the department by the Legislature.

Amended by Chapter 82, 1997 General Session

4-2-2. Functions, powers, and duties of department -- Fees for services -- Marketing orders -- Procedure.

(1) The department shall:

(a) inquire into and promote the interests and products of agriculture and its allied industries;

(b) promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;

(c) (i) inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and

(ii) initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;

(d) encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;

(e) issue marketing orders for any designated agricultural product to:

(i) promote orderly market conditions for any product;

(ii) give the producer a fair return on the producer's investment at the marketplace; and

(iii) only promote and not restrict or restrain the marketing of Utah agricultural commodities;

(f) administer and enforce all laws assigned to the department by the Legislature;

(g) establish standards and grades for agricultural products and fix and collect reasonable fees for services performed by the department in conjunction with the grading of agricultural products;

(h) establish operational standards for any establishment that manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;

(i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;

(j) when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;

(k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;

(ii) establish and enforce quarantines;

(iii) issue and enforce orders and rules for the control and eradication of pests, wherever they may exist within the state; and

(iv) perform other duties relating to plants and plant products considered advisable and not contrary to law;

(l) inspect apiaries for diseases inimical to bees and beekeeping;

(m) take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;

(n) assist the Conservation Commission in the administration of Title 4, Chapter 18, Conservation Commission Act, and administer and disburse any funds available to assist conservation districts in the state in the conservation of the state's soil and water resources;

(o) participate in the United States Department of Agriculture certified agricultural mediation program, in accordance with 7 U.S.C. Sec. 5101 and 7 C.F.R. Part 785;

(p) promote and support the multiple use of public lands; and

(q) perform any additional functions, powers, and duties provided by law.

(2) The department, by following the procedures and requirements of Section 63J-1-504, may adopt a schedule of fees assessed for services provided by the department.

(3) (a) No marketing order issued under Subsection (1)(e) shall take effect until:

(i) the department gives notice of the proposed order to the producers and handlers of the affected product;

(ii) the commissioner conducts a hearing on the proposed order; and

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

(b) (i) The department may establish boards of control to administer marketing orders and the proceeds derived from any order.

(ii) The board of control shall:

(A) ensure that all proceeds are placed in an account in the board of control's name in a depository institution; and

(B) ensure that the account is annually audited by an accountant approved by the commissioner.

(4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be deposited in the General Fund as dedicated credits for the grain grading program.

Amended by Chapter 383, 2011 General Session

4-2-3. Administration by commissioner.

Administration of the department is under the direction, control, and management of a commissioner appointed by the governor with the consent of the Senate. The commissioner shall serve at the pleasure of the governor. The governor shall establish the commissioner's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 176, 2002 General Session

4-2-4. Organization of divisions within department.

The commissioner shall organize the department into divisions, as necessary, for the efficient administration of the department's business.

Amended by Chapter 15, 1987 General Session

4-2-5. Submission of department's budget.

The commissioner, on or before October 1 of each year, shall submit an itemized budget for the department to the governor. The proposed budget shall contain a complete plan of proposed expenditures and estimated revenues for the ensuing fiscal year and shall be accompanied by a statement setting forth the revenues and expenditures for the fiscal year next preceding, and the current assets and liabilities of the department, including restricted revenue accounts and dedicated credits.

Enacted by Chapter 2, 1979 General Session

4-2-6. Official seal -- Authentication of records.

The department shall adopt and use an official seal, a description and impression of which shall be filed with the Division of Archives. Copies of official department records, documents, and proceedings may be authenticated with the seal attested by the commissioner.

Amended by Chapter 67, 1984 General Session

4-2-7. Agricultural Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.

(1) There is created the Agricultural Advisory Board composed of 16 members,

with each member representing one of the following:

(a) Utah Farm Bureau Federation;

(b) Utah Farmers Union;

(c) Utah Cattlemen's Association;

(d) Utah Wool Growers' Association;

(e) Utah Dairymen's Association;

(f) Utah Pork Producer's Association;

(g) egg and poultry producers;

(h) Utah Veterinary Medical Association;

(i) Livestock Auction Marketing Association;

(j) Utah Association of Conservation Districts;

(k) the Utah horse industry;

(l) the food processing industry;

(m) the fruit and vegetable industry;

(n) the turkey industry;

(o) manufacturers of food supplements; and

(p) a consumer affairs group.

(2) The Agricultural Advisory Board shall advise the commissioner regarding:

(a) the planning, implementation, and administration of the department's programs; and

(b) the establishment of standards governing the care of livestock and poultry, including consideration of:

(i) food safety;

(ii) local availability and affordability of food; and

(iii) acceptable practices for livestock and farm management.

(3) (a) Except as required by Subsection (3)(c), members are appointed by the commissioner to four-year terms of office.

(b) The commissioner shall appoint representatives of the organizations cited in Subsections (1)(a) through (h) to the Agricultural Advisory Board from a list of nominees submitted by each organization.

(c) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) Members may be removed at the discretion of the commissioner upon the request of the group they represent.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The board shall elect one member to serve as chair of the Agricultural Advisory Board for a term of one year.

(5) (a) The board shall meet four times annually, but may meet more often at the discretion of the chair.

(b) Attendance of nine members at a duly called meeting constitutes a quorum for the transaction of official business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 461, 2013 General Session

4-2-8. Temporary advisory committees -- Appointment -- Compensation.

(1) The commissioner with the permission of the governor, may appoint other advisory committees on a temporary basis to offer technical advice to the department.
(2) A member of a committee serves at the pleasure of the commissioner.
(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 383, 2011 General Session

4-2-8.3. Agriculture Conservation Easement Account.

(1) There is created within the General Fund a restricted account known as the Agriculture Conservation Easement Account.
(2) The Agriculture Conservation Easement Account consists of:
(a) grants from private foundations;
(b) grants from local governments, the state, or the federal government;
(c) grants from the Quality Growth Commission created under Section 11-38-201;
(d) donations from landowners for monitoring and enforcing compliance with conservation easements;
(e) donations from any other person; and
(f) interest on account money.
(3) Upon appropriation by the Legislature, the Department of Agriculture and Food shall use money from the account to monitor and enforce compliance with conservation easements held by the department.
(4) The department may not receive or expend donations from the account to acquire conservation easements.

Enacted by Chapter 35, 2006 General Session

4-2-8.5. Salinity Offset Fund.

(1) As used in this section, "Colorado River Salinity Offset Program" means a program, administered by the Division of Water Quality, allowing oil, gas, or mining companies and other entities to provide funds to finance salinity reduction projects in the Colorado River Basin by purchasing salinity credits as offsets against discharges made by the company under permits issued by the Division of Water Quality.

(2) (a) There is created an expendable special revenue fund known as the "Salinity Offset Fund."

(b) The fund shall consist of:

(i) money received from the Division of Water Quality that has been collected as part of the Colorado River Salinity Offset Program;

(ii) grants from local governments, the state, or the federal government;

(iii) grants from private entities; and

(iv) interest on fund money.

(3) (a) The department shall:

(i) subject to the rules established under Subsection (3)(a)(ii), distribute fund money to farmers, ranchers, mutual irrigation companies, and other entities in the state to assist in financing irrigation, rangeland, and watershed improvement projects that will, in accordance with the Colorado River Salinity Offset Program, reduce salinity in the Colorado River; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:

(A) a project funding application process;

(B) project funding requirements;

(C) project approval criteria; and

(D) standards for evaluating the effectiveness of funded projects in reducing salinity in the Colorado River.

(b) The department may require entities seeking fund money to provide matching funds.

(c) The department shall submit to the Water Quality Board's executive secretary proposed funding projects for the executive secretary's review and approval.

(4) The department may use fund money for the administration of the fund, but this amount may not exceed 10% of the annual receipts to the fund.

Amended by Chapter 400, 2013 General Session

4-2-8.6. Cooperative agreements and grants to rehabilitate areas infested with invasive species or prevent wildland fire.

After consulting with the Department of Natural Resources and the Conservation Commission, the department may:

(1) enter into a cooperative agreement with a political subdivision, a state agency, a federal agency, or a federal, state, tribal, or private landowner to:

(a) rehabilitate an area that:

(i) is infested with an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire; or

(b) prevent catastrophic wildland fire through land restoration in a watershed that:

(i) is impacted by an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire;

(2) expend money from the Invasive Species Mitigation Account created in Section 4-2-8.7; and

(3) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, make rules to:

(a) administer this section; and

(b) give grants from the Invasive Species Mitigation Account.

Amended by Chapter 461, 2013 General Session

4-2-8.7. Invasive Species Mitigation Account created.

(1) As used in this section, "project" means an undertaking that:

(a) rehabilitates an area that:

(i) is infested with an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire; or

(b) prevents catastrophic wildland fire through land restoration in a watershed that:

(i) is impacted by an invasive species; or

(ii) has a fuel load that may contribute to a catastrophic wildland fire.

(2) (a) There is created a restricted account within the General Fund known as the "Invasive Species Mitigation Account."

(b) The restricted account shall consist of:

(i) money appropriated by the Legislature;

(ii) grants from the federal government; and

(iii) grants or donations from a person.

(3) (a) After consulting with the Department of Natural Resources and the Conservation Commission, the department may expend money in the restricted account:

(i) on a project implemented by:

(A) the department; or

(B) the Conservation Commission; or

(ii) by giving a grant for a project to:

(A) a state agency;

(B) a federal agency;

(C) a federal, state, tribal, or private landowner; or

(D) a political subdivision.

(b) The department may use up to 10% of restricted account funds expended under Subsection (3)(a)(i) on:

(i) department administration; or

(ii) project planning, monitoring, and implementation expenses.

(c) A federal landowner that receives restricted account funds for a project shall match the funds received from the restricted account with an amount that is equal to or greater than the amount received from the restricted account.

(4) In giving a grant, the department shall consider the effectiveness of a project in preventing at least one of the following:

(a) encroachment of an invasive species;

(b) soil erosion;

(c) flooding;

(d) the risk of catastrophic wildfire; or

(e) damage to habitat for wildlife or livestock.

Amended by Chapter 461, 2013 General Session

4-2-9. Appointment.

The state chemist shall be appointed by the commissioner.

Amended by Chapter 10, 1997 General Session
Amended by Chapter 81, 1997 General Session

4-2-10. State chemist responsibilities.

(1) The state chemist shall:

(a) serve as the chief administrative officer of the Division of Laboratories; and

(b) supervise and administer all analytical tests required to be performed under this title or under any rule authorized by it.

(2) The state chemist may perform analytical tests for other state agencies, federal agencies, units of local government, and private persons if:

(a) the tests and analytical work do not interfere with, or impede, the work required by the department; and

(b) a charge commensurate with the work involved is made and collected.

(3) The state chemist shall perform any other official duties assigned by the commissioner.

Amended by Chapter 179, 2007 General Session

4-2-11. Attorney general legal advisor for department -- County or district attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and its representatives in all actions and proceedings brought against it.

(2) The county attorney or the district attorney as provided under Sections 17-18a-202 and 17-18a-203 of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title. If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

Amended by Chapter 237, 2013 General Session

4-2-12. Notice of violation -- Order for corrective action.

(1) Whenever the department determines that any person, or any officer or employee of any person, is violating any requirement of this title or rules adopted under this title, the department shall serve written notice upon the alleged violator which specifies the violation and alleges the facts constituting the violation.

(2) After serving notice as required in Subsection (1), the department may issue an order for necessary corrective action and request the attorney general or the county attorney or the district attorney to seek injunctive relief and enforcement of the order as

provided in Subsection 4-2-11(2).

Amended by Chapter 79, 1996 General Session

4-2-14. Violations of title unlawful.

It is unlawful for any person, or the officers or employees of any person, to willfully violate, disobey, or disregard this title or any notice or order issued under this title.

Enacted by Chapter 104, 1985 General Session

4-2-15. Civil and criminal penalties -- Costs -- Civil liability.

(1) Except as otherwise provided by this title, any person, or the officers or employees of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed $5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title does not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

Amended by Chapter 378, 2010 General Session

4-3-1. Definitions.

As used in this chapter:

(1) "Adulterated" means any dairy product that:

(a) contains any poisonous or deleterious substance that may render it injurious to health;

(b) has been produced, prepared, packaged, or held:

(i) under unsanitary conditions;

(ii) where it may have become contaminated; or

(iii) where it may have become diseased or injurious to health;

(c) contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(d) contains:

(i) any filthy, putrid, or decomposed substance;

(ii) fresh fluid milk with a lactic acid level at or above .0018; or

(iii) cream with a lactic acid level at or above .008 or that is otherwise unfit for human food;

(e) is the product of:

(i) a diseased animal;

(ii) an animal that died otherwise than by slaughter; or

(iii) an animal fed upon uncooked offal;

(f) has intentionally been subjected to radiation, unless the use of the radiation

is in conformity with a rule or exemption promulgated by the department; or

(g) (i) has any valuable constituent omitted or abstracted;

(ii) has any substance substituted in whole or in part;

(iii) has damage or inferiority concealed in any manner; or

(iv) has any substance added, mixed, or packed with the product to:

(A) increase its bulk or weight;

(B) reduce its quality or strength; or

(C) make it appear better or of greater value.

(2) "Cow-share program" means a program in which a person acquires an undivided interest in a milk producing hoofed mammal through an agreement with a producer that includes:

(a) a bill of sale for an interest in the mammal;

(b) a boarding arrangement under which the person boards the mammal with the producer for the care and milking of the mammal; and

(c) an arrangement under which the person receives raw milk for personal consumption.

(3) "Dairy product" means any product derived from raw or pasteurized milk.

(4) "Distributor" means any person who distributes a dairy product.

(5) (a) "Filled milk" means any milk, cream, or skimmed milk, whether condensed, evaporated, concentrated, powdered, dried, or desiccated, that has fat or oil other than milk fat added, blended, or compounded with it so that the resultant product is an imitation or semblance of milk, cream, or skimmed milk.

(b) "Filled milk" does not include any distinctive proprietary food compound:

(i) that is prepared and designated for feeding infants and young children, which is customarily used upon the order of a licensed physician;

(ii) whose product name and label does not contain the word "milk"; and

(iii) whose label conforms with the food labeling requirements.

(6) "Frozen dairy products" mean dairy products normally served to the consumer in a frozen or semifrozen state.

(7) "Grade A milk," "grade A milk products," and "milk" have the same meaning that is accorded the terms in the federal standards for grade A milk and grade A milk products unless modified by rules of the department.

(8) "License" means a document allowing a person or plant to process, manufacture, supply, test, haul, or pasteurize milk or milk products or conduct other activity specified by the license.

(9) "Manufacturer" means any person who processes milk in a way that changes the milk's character.

(10) "Manufacturing milk" means milk used in the production of non-grade A dairy products.

(11) "Misbranded" means:

(a) any dairy product whose label is false or misleading in any particular, or whose label or package fails to conform to any federal regulation adopted by the department that pertains to packaging and labeling;

(b) any dairy product in final packaged form manufactured in this state that does not bear:

(i) the manufacturer's, packer's, or distributor's name, address, and plant

number, if applicable;

(ii) a clear statement of the product's common or usual name, quantity, and ingredients, if applicable; and

(iii) any other information required by rule of the department;

(c) any butter in consumer package form that is not at least B grade, or that does not meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;

(d) any imitation butter made in whole or in part from material other than wholesome milk or cream, except clearly labeled "margarine";

(e) renovated butter unless the words "renovated butter," in letters not less than 1/2-inch in height appear on each package, roll, square, or container of such butter; or

(f) any dairy product in final packaged form that makes nutritional claims or adds or adjusts nutrients that are not so labeled.

(12) "Pasteurization" means any process that renders dairy products practically free of disease organisms and is accepted by federal standards.

(13) "Permit or certificate" means a document allowing a person to market milk.

(14) "Plant" means any facility where milk is processed or manufactured.

(15) "Processor" means any person who subjects milk to a process.

(16) "Producer" means a person who owns a cow or other milk producing hoofed mammal that produces milk for consumption by persons other than the producer's family, employees, or nonpaying guests.

(17) "Raw milk" means unpasteurized milk.

(18) "Renovated butter" means butter that is reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product of milk.

(19) "Retailer" means any person who sells or distributes dairy products directly to the consumer.

Amended by Chapter 165, 2007 General Session
Amended by Chapter 179, 2007 General Session

4-3-2. Authority to make and enforce rules.

The department is authorized and directed, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as may in its judgment and discretion be necessary to carry out the purposes of this chapter.

Amended by Chapter 382, 2008 General Session

4-3-3. Authority in local jurisdictions to regulate dairy products -- Department standards to govern -- Department evaluation permitted -- Local notice to cease inspection.

While nothing in this chapter shall impair the authority of any town, city, or county to regulate the production, handling, storage, distribution, or sale of dairy products, frozen dairy products, grade A milk, grade A milk products, or milk, within their respective jurisdictions, a common standard as prescribed by the department shall be followed in such jurisdictions.

If a town, city, or county elects to enforce this chapter, the department shall accept its findings relative to inspections in lieu of making its own inspections, but the department may evaluate the effectiveness of any local inspection program. If a town, city, or county intends to cease making inspections under this chapter, it shall notify the department of its intent to cease inspection at least one year in advance of the actual cessation of inspection.

Upon request, the commissioner shall cooperate with other state agencies, towns, cities, counties, and federal authorities in the administration and enforcement of this chapter.

Enacted by Chapter 2, 1979 General Session

4-3-4. Authority to inspect premises.

(1) The department may inspect any premises where dairy products are produced, manufactured, processed, stored, or held for distribution, at reasonable times and places, to determine whether the premises are in compliance with this chapter and the rules adopted according to it.

(2) If the department is denied access, it may proceed immediately to the nearest court of competent jurisdiction to seek an ex parte warrant or its equivalent to permit inspection of the premises.

Amended by Chapter 179, 2007 General Session

4-3-5. Authority to collect samples -- Receipt -- Names of distributors.

(1) Samples of dairy products from each dairy farm or processing plant may be secured and examined as often as deemed necessary by the department.

(2) Samples of dairy products from stores, cafes, soda fountains, restaurants, and other places where dairy products are sold may be secured and examined as often as deemed necessary by the department.

(3) Samples of milk or dairy products may be taken by the department at any time before final delivery to the consumer.

(4) The department shall provide a signed receipt for all samples taken showing the date of sampling and the amount and kind of sample taken; provided, that the department is not liable to any person for the cost of any sample taken.

(5) All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the department, upon request, with the names of all distributors from whom dairy products are obtained.

Enacted by Chapter 2, 1979 General Session

4-3-6. Condemnation, embargo, denaturization of unfit milk or dairy products -- Unfit equipment.

(1) The department may condemn or embargo any milk or dairy product which is adulterated, misbranded, or not produced or processed in accordance with this chapter.

(2) The department may condemn the use of any equipment, tank, or container used to produce, process, manufacture, or transport milk or dairy products that it finds,

upon inspection, to be unclean or contaminated.

(3) The department may mark or tag any condemned equipment, tank, or container with the words "this (equipment, tank, or container) is unfit to contain human food."

(4) Condemned milk shall be decharacterized or denatured with harmless coloring or rennet by the department.

Enacted by Chapter 2, 1979 General Session

4-3-7. Testing and measuring milk -- Standards prescribed -- Milk quality work in accordance with rules.

(1) Milk shall be tested and measured in accordance with:

(a) the latest edition of "Association of Official Analytical Chemists";

(b) the latest edition of "Standard Methods for Examination of Dairy Products";

(c) other publications accepted by the department; or

(d) methods prescribed by the department.

(2) A processor or manufacturer shall perform quality work in accordance with the rules adopted by the department.

Amended by Chapter 179, 2007 General Session

4-3-8. Licenses and permits -- Application -- Fee -- Expiration -- Renewal.

(1) Application for a license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products shall be made to the department upon forms prescribed and furnished by it.

(2) Upon receipt of a proper application, compliance with all applicable rules, and payment of a license fee determined by the department according to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause.

(3) Each license issued under this section expires at midnight on December 31 of each year.

(4) A license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products, is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection 4-2-2(2) on or before December 31 of each year.

(5) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it.

(6) (a) Upon receipt of a proper application and compliance with all applicable rules, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause.

(b) No fee may be charged by the department for issuance of a permit or certificate.

Amended by Chapter 179, 2007 General Session

4-3-9. Licenses, permits, and certificates -- Suspension or revocation -- Grounds.

(1) The department may revoke or suspend the license, permit, or certification of any person who violates this chapter or any rule enacted under the authority of this chapter.

(2) All or part of any license, permit, or certification may be suspended immediately if an emergency exists that presents a clear and present danger to the public health, or if inspection or sampling is refused.

Amended by Chapter 161, 1987 General Session

4-3-10. Unlawful acts specified.

It is unlawful for any person in this state to:

(1) operate a plant without a license issued by the department;

(2) market milk without a permit or certificate issued by the department;

(3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk without a special license to perform the particular activity designated in this Subsection (3); unless if more than one person working in a plant is engaged in the performance of a single activity designated in this Subsection (3), the person who directs the activity is licensed;

(4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or misbranded dairy product;

(5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy product without a license, permit, or certificate required by this chapter;

(6) sell or offer for sale any milk not intended for human consumption unless it is denatured or decharacterized in accordance with the rules of the department;

(7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a dairy product;

(8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious diseases communicable to humans in any place where they may come in contact with cows or other milking animals;

(9) draw milk for human food from cows or other milking animals that are infected with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that will produce milk that is adulterated;

(10) accept or process milk from any producer without verification that the producer holds a valid permit or certification or, if milk is accepted from out of the state, without verification that the producer holds a permit or certification from the appropriate regulatory agency of that state;

(11) use any contaminated or unclean equipment or container to process, manufacture, distribute, deliver, or sell a dairy product;

(12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any equipment, tank, or container by the department except to clean and sanitize it;

(13) use any tank or container used for the transportation of milk or other dairy products that is unclean or contaminated;

(14) refuse to allow the department to take samples for testing;

(15) prohibit adding vitamin compounds in the processing of milk and dairy products in accordance with rules of the department; or

(16) own, operate, organize, or otherwise participate in a cow-share program where the milk producing hoofed mammal is located in Utah.

Amended by Chapter 165, 2007 General Session
Amended by Chapter 179, 2007 General Session

4-3-11. Processors, manufacturers, or distributors -- Unlawful to give money, equipment, or fixtures to retailer or consumer -- Exceptions -- Shelf space for dairy products.

(1) As used in this section:

(a) "liquid dairy product" means a milk container which contains a pint of milk or less; and

(b) "novelty ice cream" means a package or container of ice cream which contains eight fluid ounces or less.

(2) Except as provided in Subsections (3) and (4), no processor, manufacturer, distributor, or his affiliates, subsidiaries, associates, agents or stockholders shall furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any:

(a) money;

(b) equipment;

(c) fixtures, including ice cream cabinets or bulk milk dispensers;

(d) supplies, excluding expendable supplies commonly provided in connection with the sale of dairy products to a consumer; or

(e) other things having a real or substantial value.

(3) (a) Ice cream cabinets may be loaned or sold to a retailer if the ice cream cabinet:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of novelty ice cream.

(b) Milk coolers may be loaned or sold to a retailer if the milk cooler:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of liquid dairy products.

(4) The leasing or renting of cabinets, dispensers, or coolers for dairy products for civic affairs, demonstrations, or exhibits is prohibited unless it is for a period of 10 days or less in any one period of three consecutive months.

(5) (a) Except as provided in Subsections (5)(b) and (5)(c), no retailer shall lease, sell, or loan shelf or refrigerator space for dairy products to a processor, manufacturer, or distributor or receive anything of value from a processor, manufacturer, or distributor in exchange for shelf or refrigerator space for dairy products.

(b) Subsection (5)(a) does not apply to a dairy by-product that is:

(i) a short-term special; or

(ii) a new product being introduced on a trial basis for a period not to exceed 45 days.

(c) A processor, manufacturer, or distributor may loan or sell an ice cream cabinet or milk cooler to a retailer for the display of the processor's, manufacturer's, or distributor's products, if the ice cream cabinet or milk cooler meets the requirements of Subsection (3).

Amended by Chapter 87, 2001 General Session

4-3-12. Injunctions -- Bond not required -- Standing to maintain private action -- Damages authorized.

(1) The commissioner is authorized to apply to any court of competent jurisdiction for a temporary restraining order or injunction restraining any person from violating this chapter. No bond shall be required of the department in any proceeding brought under this subsection.

(2) In addition to penalties provided in this chapter, any person who suffers or is threatened with injury from any existing or threatened violation of Section 4-3-11 may commence an action in any court of competent jurisdiction for damages and, if proper, injunctive relief. Any organized and existing trade association, whether incorporated or not, is authorized to institute and prosecute a suit for injunctive relief and damages, as the real party in interest, on behalf of one or more of its members if the violation of Section 4-3-11 directly or indirectly affects a member.

Enacted by Chapter 2, 1979 General Session

4-3-13. Milk or milk products consumed by owner of farm exempt.

This chapter is inapplicable to milk or milk products produced on the farm if such milk or milk products are consumed by the owner of the farm or members of such owner's immediate family.

Enacted by Chapter 2, 1979 General Session

4-3-14. Sale of raw milk -- Suspension of producer's permit -- Severability not permitted.

(1) As used in this section:

(a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

(b) "Self-owned retail store" means a retail store:

(i) of which the producer owns at least 51% of the value of the real property and tangible personal property used in the operations of the retail store; or

(ii) for which the producer has the power to vote at least 51% of any class of voting shares or ownership interest in the business entity that operates the retail store.

(2) Raw milk may be manufactured, distributed, sold, delivered, held, stored, or offered for sale if:

(a) the producer obtains a permit from the department to produce milk under Subsection 4-3-8(5);

(b) the sale and delivery of the milk is made upon the premises where the milk is produced, except as provided by Subsection (3);

(c) the raw milk is sold to consumers for household use and not for resale;

(d) the raw milk is bottled or packaged under sanitary conditions and in sanitary containers on the premises where the raw milk is produced;

(e) the raw milk is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

(f) the raw milk is:

(i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being drawn from the animal;

(ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and

(iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is delivered to the consumer;

(g) the bacterial count of the raw milk does not exceed 20,000 colony forming units per milliliter;

(h) the coliform count of the raw milk does not exceed 10 colony forming units per milliliter;

(i) the production of the raw milk conforms to departmental rules for the production of grade A milk;

(j) all dairy animals on the premises are:

(i) permanently and individually identifiable; and

(ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

(k) any person on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk is free from communicable disease.

(3) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk at a self-owned retail store, which is properly staffed, if, in addition to the requirements of Subsection (2), the producer:

(a) transports the raw milk from the premises where the raw milk is produced to the self-owned retail store in a refrigerated truck where the raw milk is maintained at 41 degrees Fahrenheit or a lower temperature;

(b) retains ownership of the raw milk until it is sold to the final consumer, including transporting the raw milk from the premises where the raw milk is produced to the self-owned retail store without any:

(i) intervening storage;

(ii) change of ownership; or

(iii) loss of physical control;

(c) stores the raw milk at 41 degrees Fahrenheit or a lower temperature in a display case equipped with a properly calibrated thermometer at the self-owned retail store;

(d) places a sign above the display case at the self-owned retail store that reads, "Raw Unpasteurized Milk";

(e) labels the raw milk with:

(i) a date, no more than nine days after the raw milk is produced, by which the raw milk should be sold;

(ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";

(iii) handling instructions to preserve quality and avoid contamination or

spoilage; and

(iv) any other information required by rule;

(f) refrains from offering the raw milk for sale until:

(i) the department or a third party certified by the department tests each batch of raw milk for standard plate count and coliform count; and

(ii) the test results meet the minimum standards established for those tests;

(g) (i) maintains a database of the raw milk sales; and

(ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;

(h) refrains from offering any pasteurized milk at the self-owned retail store;

(i) ensures that the plant and retail store complies with Title 4, Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section 4-5-9; and

(j) complies with all applicable rules adopted as authorized by this chapter.

(4) A person who conducts a test required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are available.

(5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the sale of raw milk at a self-owned retail store.

(b) The rules adopted by the department shall include rules regarding:

(i) permits;

(ii) building and premises requirements;

(iii) sanitation and operating requirements, including bulk milk tanks requirements;

(iv) additional tests;

(v) frequency of inspections, including random cooler checks;

(vi) recordkeeping; and

(vii) packaging and labeling.

(c) (i) The department shall establish and collect a fee for the tests and inspections required by this section and by rule in accordance with Section 63J-1-504.

(ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this section.

(6) (a) The department shall suspend a permit issued under Section 4-3-8 if:

(i) two out of four consecutive samples or two samples in a 30-day period violate sample limits established under this section; or

(ii) a producer violates a provision of this section or a rule adopted as authorized by this section.

(b) The department may reissue a permit that has been suspended under Subsection (6)(a) if the producer has complied with all of the requirements of this section and rules adopted as authorized by this section.

(7) For 2014 and 2015, the Department of Health and the Department of Agriculture and Food shall report on or before November 30th to the Natural Resources, Agriculture, and Environment Interim Committee on any health problems resulting from the sale of raw whole milk at self-owned retail stores.

(8) (a) If any subsection of this section or the application of any subsection to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of the section may not be given effect without the invalid

subsection or application.

(b) The provisions of this section may not be severed.

Amended by Chapter 167, 2013 General Session
Amended by Chapter 461, 2013 General Session

4-4-1. Department to establish egg grades and standards.

The department shall establish grades and standards of quality, size, and weight governing the sale of eggs.

Enacted by Chapter 2, 1979 General Session

4-4-2. Authority to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-4-3. Definitions.

As used in this chapter:

(1) "Addled" or "white rot" means putrid or rotten.

(2) "Adherent yolk" means the yolk has settled to one side and become fastened to the shell.

(3) "Black rot" means the egg has deteriorated to such an extent that the whole interior presents a blackened appearance.

(4) "Black spot" means mould or bacteria have developed in isolated areas inside the shell.

(5) "Blood ring" means bacteria have developed to such an extent that blood is formed.

(6) "Candling" means the act of determining the condition of an egg by holding it before a strong light in such a way that it shines through the egg and reveals its contents.

(7) "Mouldy" means mould spores have formed within the shell.

Enacted by Chapter 2, 1979 General Session

4-4-4. Unlawful acts specified.

(1) It is unlawful for any person to sell, offer, or expose any egg for sale for human consumption:

(a) that is addled or mouldy or that contains black spot, black rot, white rot, blood ring, adherent yolk, or a bloody or green white, also called albumen; or

(b) without a sign or label that conforms to the standards for display and grade adopted by the department.

(2) Nothing in this section shall prohibit the sale of denatured eggs.

Amended by Chapter 179, 2007 General Session

4-4-5. Maintenance of candling records -- Inspection of records.

Every person who sells, offers, or exposes eggs for sale or exchange shall maintain candling records as prescribed by the department. All candling records shall be open for examination by accredited inspectors or representatives of the department at reasonable times.

Enacted by Chapter 2, 1979 General Session

4-4-6. Retailers exempt from prosecution -- Conditions for exemption.

No retailer is subject to prosecution under this chapter if the retailer can establish that at the time the eggs were purchased the seller guaranteed that the eggs conformed to the grade and quality and size and weight stated in the purchase invoice and that the eggs were labeled for sale by the retailer in accordance with the purchase invoice; provided, that such guaranty by the seller does not exempt a retailer from prosecution if the eggs covered by the guaranty deteriorated to a lower grade or standard through some action or inaction of the retailer.

Enacted by Chapter 2, 1979 General Session

4-5-1. Short title.

This chapter is known as the "Utah Wholesome Food Act."

Amended by Chapter 157, 1990 General Session

4-5-2. Definitions.

As used in this chapter:

(1) "Advertisement" means a representation, other than by labeling, made to induce the purchase of food.

(2) (a) "Color additive" means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color. "Color" includes black, white, and intermediate grays.

(b) "Color additive" does not include a pesticide chemical, soil or plant nutrient, or other agricultural chemical which imparts color solely because of its effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life.

(3) (a) "Consumer commodity" means a food, as defined by this act, or by the federal act.

(b) "Consumer commodity" does not include:

(i) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.;

(ii) a commodity subject to Title 4, Chapter 16, Utah Seed Act;

(iii) a meat or meat product subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(iv) a poultry or poultry product subject to the Poultry Inspection Act, 21 U.S.C.

Sec. 451 et seq.;

(v) a tobacco or tobacco product; or

(vi) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5) "Farmers market" means a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.

(6) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(7) "Food" means:

(a) an article used for food or drink for human or animal consumption or the components of the article;

(b) chewing gum or its components; or

(c) a food supplement for special dietary use which is necessitated because of a physical, physiological, pathological, or other condition.

(8) (a) "Food additive" means a substance, the intended use of which results in the substance becoming a component, or otherwise affecting the characteristics, of a food. "Food additive" includes a substance or source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

(b) "Food additive" does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical that is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity; or

(iii) a substance used in accordance with a sanction or approval granted pursuant to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq. or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

(9) (a) "Food establishment" means a grocery store, bakery, candy factory, food processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill, cold or dry warehouse storage, or other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(b) "Food establishment" does not include:

(i) a dairy farm, a dairy plant, or a meat establishment, which is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.; or

(ii) a farmers market.

(10) "Label" means a written, printed, or graphic display on the immediate container of an article of food. The department may require that a label contain specific written, printed, or graphic information which is:

(a) displayed on the outside container or wrapper of a retail package of an article; or

(b) easily legible through the outside container or wrapper.

(11) "Labeling" means a label and other written, printed, or graphic display:

(a) on an article of food or its containers or wrappers; or

(b) accompanying the article of food.

(12) "Official compendium" means the official documents or supplements to the:

(a) United States Pharmacopoeia;

(b) National Formulary; or

(c) Homeopathic Pharmacopoeia of the United States.

(13) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of the consumer commodity to retail purchasers.

(b) "Package" does not include:

(i) package liners;

(ii) shipping containers or wrapping used solely for the transportation of consumer commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors; or

(iii) shipping containers or outer wrappings used by retailers to ship or deliver a consumer commodity to retail customers, if the containers and wrappings bear no printed information relating to the consumer commodity.

(14) (a) "Pesticide" means a substance intended:

(i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection 4-14-2(20); or

(ii) for use as a plant regulator, defoliant, or desicant.

(b) "Pesticide" does not include:

(i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by federal regulation establishing conditions of use of the drug; or

(ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal drug.

(15) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(16) "Raw agricultural commodity" means a food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled, natural form prior to marketing.

(17) "Registration" means the issuance of a certificate by the commissioner to a qualified food establishment.

Amended by Chapter 146, 2007 General Session

4-5-3. Unlawful acts specified.

(1) A person may not:

(a) manufacture, sell, deliver, hold, or offer for sale a food that is adulterated or misbranded;

(b) adulterate or misbrand food;

(c) except as provided in Subsection (2), distribute, in commerce, a consumer commodity inconsistent with the packaging and labeling requirements of this chapter, or the rules made under this chapter;

(d) sell, deliver for sale, hold for sale, or offer for sale an article in violation of Section 4-5-9;

(e) disseminate false advertising;

(f) remove or dispose of detained or embargoed food in violation of Section 4-5-5;

(g) adulterate, mutilate, destroy, obliterate, or remove the food label which results in the food being misbranded or adulterated while the food is for sale;

(h) forge, counterfeit, simulate, or misrepresent a label or information, by the unauthorized use of a mark, stamp, tag, label, or other identification device;

(i) use or reveal a method, process, or information which is protected as a trade secret;

(j) operate a food establishment without a valid registration issued by the department; and

(k) refuse entry to an authorized agent of the department in a food establishment as required under Section 4-5-18.

(2) Subsection (1)(c) does not apply to a person engaged in the wholesale or retail distribution of consumer commodities unless that person:

(a) is engaged in the packaging or labeling of consumer commodities; or

(b) prescribes or specifies the manner in which consumer commodities are packaged or labeled.

Amended by Chapter 358, 2004 General Session

4-5-4. Defenses.

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination of such false advertisement, unless he has refused, on the request of the department to furnish it, the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Utah who caused him to disseminate such advertisement.

Amended by Chapter 104, 1985 General Session

4-5-5. Adulterated or misbranded articles -- Tagging -- Detention or embargo -- Court proceedings for condemnation -- Perishable food.

(1) (a) When an authorized agent of the department finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the food a tag or other appropriate marking, giving notice that:

(i) the food is, or is suspected of being, adulterated or misbranded;

(ii) the food has been detained or embargoed; and

(iii) removal of the food is prohibited as provided in Subsection (1)(b).

(b) No person may remove or dispose of detained or embargoed food by sale or otherwise until permission for removal or disposal is given by an agent of the department or the court.

(2) When food detained or embargoed under Subsection (1) has been found by an agent to be adulterated or misbranded, the department shall petition the district court in whose jurisdiction the food is detained or embargoed for an order of condemnation of the food. When the agent has found that food so detained or embargoed is not adulterated or misbranded, the department shall remove the tag or other marking.

(3) (a) If the court finds that detained or embargoed food is adulterated or misbranded, the food shall, after entry of the decree, be destroyed under the supervision of the agent.

(b) If the adulteration or misbranding can be corrected by proper labeling or processing of the food, the court may by order direct that the food be delivered to the claimant for labeling or processing after:

(i) entry of the decree;

(ii) all costs, fees, and expenses have been paid; and

(iii) a sufficient bond, conditioned that the food shall be properly labeled and processed, has been executed.

(c) An agent of the department shall supervise, at the claimant's expense, the labeling or processing of the food.

(d) The bond shall be returned to the claimant of the food upon:

(i) representation to the court by the department that the food is no longer in violation of this chapter; and

(ii) the expenses of supervision have been paid.

(4) If an authorized agent of the department finds in any building or vehicle any perishable food which is unsound, contains any filthy, decomposed, or putrid substance, or may be poisonous, deleterious to health, or otherwise unsafe, the commissioner or his authorized agent shall condemn or destroy the food or render it unsalable as human food.

Amended by Chapter 378, 2010 General Session

4-5-6. Definitions and standards of identity, quality, and fill of container -- Rules -- Temporary and special permits.

(1) (a) Definitions and standards of identity, quality and fill of container, now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the definitions and standards of identity, quality and fill of container in this state.

(b) The department may adopt rules establishing definitions and standards of identity, quality and fill of container for foods where no federal regulations exist and may promulgate amendments to any federal regulations or state rules that set definitions and standards of identity, quality and fill of container for foods.

(2) (a) Temporary permits now or hereafter granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under the conditions provided in the permits.

(b) The department may issue additional permits where they are necessary for the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded.

(c) Permits are subject to the terms and conditions the department may prescribe by rule.

Amended by Chapter 179, 2007 General Session

4-5-7. Adulterated food specified.

A food is adulterated:

(1) (a) if it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance the food may not be considered adulterated under this Subsection (1)(a) if the quantity of the substance in such food does not ordinarily render it injurious to health;

(b) (i) if it bears or contains any added poisonous or added deleterious substance other than one that is:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a food additive; or

(C) a color additive that is unsafe within the meaning of Subsection 4-5-11(1); or

(ii) if it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a; or

(iii) if it is or it bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 4-5-11 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(c) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(d) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(e) if it is, in whole or in part, the product of a diseased animal or an animal that has died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal from a slaughterhouse;

(f) if its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(g) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption in effect pursuant to Section 4-5-11, or 21 U.S.C. Sec. 348; or

(h) in meat or meat products are adulterated:

(i) if such products are in casings, packages, or wrappers through which any part of their contents can be seen and which, or the markings of which, are colored red or any other color so as to be misleading or deceptive with respect to the color, quality,

or kind of such products to which they are applied; or

(ii) if such products contain or bear any color additive;

(2) (a) if any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(b) if any substance has been substituted wholly or in part therefor;

(c) if damage or inferiority has been concealed in any manner; or

(d) if any substance has been added or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(3) if it is confectionery, and:

(a) has partially or completely imbedded therein any nonnutritive object; provided that this Subsection (3)(a) does not apply in the case of any nonnutritive objective if, in the judgment of the department such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health;

(b) bears or contains any alcohol other than alcohol not in excess of .05% by volume derived solely from the use of flavoring extracts; or

(c) bears or contains any nonnutritive substance; provided, that this Subsection (3)(c) does not apply to a safe nonnutritive substance that is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter.

(4) The department may, for the purpose of avoiding or resolving uncertainty as to the application of Subsection (3)(c), issue rules allowing or prohibiting the use of particular nonnutritive substances.

Amended by Chapter 378, 2010 General Session

4-5-8. Misbranded food specified.

(1) Food is misbranded if:

(a) its label is false or misleading in any way;

(b) its labeling or packaging fails to conform with the requirements of Section 4-5-15;

(c) it is offered for sale under the name of another food;

(d) its container is so made, formed, or filled with packing material or air as to be misleading; or

(e) it fails to conform with any requirement specified in this section.

(2) A food that is an imitation of another food shall bear a label, in type of uniform size and prominence, stating the word "imitation," and, immediately thereafter, the name of the food imitated.

(3) (a) A food in package form shall bear a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(b) The statement required by Subsection (3)(a)(ii) shall be separately and accurately stated in a uniform location upon the principal display panel of the label unless reasonable variations and exemptions for small packages are established by a rule made by the department.

(c) A manufacturer or distributor of carbonated beverages who utilizes proprietary stock or a proprietary crown is exempt from Subsection (3)(a)(i) if he files with the department:

(i) a sworn affidavit giving a full and complete description of each area within the state in which beverages of his manufacturing or distributing are to be distributed; and

(ii) the name and address of the person responsible for compliance with this chapter within each of those areas.

(4) Any word, statement, or other information required by this chapter to appear on the label or labeling shall be:

(a) prominently placed on the label;

(b) conspicuous in comparison with other words, statements, designs, or devices in the labeling; and

(c) in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(5) If a food is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or department rules as provided by Section 4-5-6, it shall:

(a) conform to the definition and standard; and

(b) have a label bearing:

(i) the name of the food specified in the definition and standard; and

(ii) insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavorings, and colorings, present in the food.

(6) If a food is represented as a food for which a standard of quality has been prescribed by federal regulations or department rules as provided by Section 4-5-6, and its quality falls below the standard, its label shall bear, in the manner and form as the regulations or rules specify, a statement indicating that it falls below the standards.

(7) If a food is represented as a food for which a standard of fill of container has been prescribed by federal regulations or department rules as provided by Section 4-5-6, and it falls below the applicable standard of fill, its label shall bear, in the manner and form as the regulations or rules specify, a statement indicating that it falls below the standard.

(8) (a) Any food for which neither a definition nor standard of identity has been prescribed by federal regulations or department rules as provided by Section 4-5-6 shall bear labeling clearly giving:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.

(b) To the extent that compliance with the requirements of Subsection (8)(a)(ii) is impractical or results in deception or unfair competition, exemptions shall be established by rules made by the department.

(9) If a food is represented as a food for special dietary uses, its label shall bear the information concerning its vitamin, mineral, and other dietary properties as the department by rule prescribes.

(10) If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, its label shall state that fact. If compliance with the requirements of this subsection is impracticable, exemptions shall be established by rules made by the department.

(11) The shipping container of any raw agricultural commodity bearing or containing a pesticide chemical applied after harvest shall bear labeling which declares the presence of the chemical in or on the commodity and the common or usual name and function of the chemical. The declaration is not required while the commodity, having been removed from the shipping container, is being held or displaced for sale at retail out of the container in accordance with the custom of the trade.

(12) A product intended as an ingredient of another food, when used according to the directions of the purveyor, may not result in the final food product being adulterated or misbranded.

(13) The packaging and labeling of a color additive shall be in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the federal act.

(14) Subsections (5), (8), and (10) with respect to artificial coloring do not apply to butter, cheese, or ice cream. Subsection (10) with respect to chemical preservatives does not apply to a pesticide chemical when used in or on a raw agricultural commodity.

Amended by Chapter 378, 2010 General Session

4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement of registration -- Inspection for compliance.

(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of food establishments to protect public health and ensure a safe food supply.

(b) The owner or operator of a food establishment shall register with the department before operating a food establishment.

(c) Prior to granting a registration to the owner or operator of a food establishment, the department shall inspect and assess the food establishment to determine whether it complies with the rules established under Subsection (1)(a).

(d) An applicant shall register with the department, in writing, using forms required by the department.

(e) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(f) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(g) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant shall correct the deficiencies within the time period specified in the notice to receive a registration.

(h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food establishment a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of food establishments.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the food establishment;

(b) the name of the owner or operator of the food establishment; and

(c) the registration issuance and expiration date.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the conditions of registration have been violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all registration requirements have been met, the department shall reinstate the registration.

(5) (a) A food establishment, registered under this section, shall allow the department to have access to the food establishment to determine if the food establishment is complying with the registration requirements.

(b) If a food establishment denies access for an inspection required under Subsection (5)(a), the department may suspend the food establishment's registration until the department is allowed access to the food establishment's premises.

Amended by Chapter 378, 2010 General Session

4-5-9.5. Cottage food production operations.

(1) For purposes of this chapter:

(a) "Cottage food production operation" means a person, who in the person's home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety.

(b) "Home" means a primary residence:

(i) occupied by the individual who is operating a cottage food production operation; and

(ii) which contains:

(A) a kitchen designed for common residential usage; and

(B) appliances designed for common residential usage.

(c) "Potentially hazardous food" or "food that requires time/temperature controls for safety":

(i) means a food that requires time and or temperature control for safety to limit pathogenic microorganism growth or toxin formation and is in a form capable of supporting:

(A) the rapid and progressive growth of infections or toxigenic microorganisms;
(B) the growth and toxin production of Clostridium botulinum; or
(C) in shell eggs, the growth of Salmonella enteritidis;
(ii) includes:
(A) an animal food;
(B) a food of animal origin that is raw or heat treated;
(C) a food of plant origin that is heat treated or consists of raw seed sprouts;
(D) cut melons;
(E) cut tomatoes; and
(F) garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (1)(c)(i); and
(iii) does not include:
(A) an air-cooled hard-boiled egg with shell intact;
(B) a food with an actual weight or water activity value of 0.85 or less;
(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;
(D) a food, in an unopened hermetically sealed container, that is processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution;
(E) a food for which laboratory evidence demonstrates that the rapid and progressive growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:
(I) has an actual weight and a pH level that are above the levels specified under Subsections (1)(c)(iii)(B) and (C); or
(II) contains a preservative or other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
(F) a food that does not support the growth of microorganisms as specified under Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.
(2) (a) The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.
(b) Rules adopted pursuant to this Subsection (2) shall provide for:
(i) the registration of cottage food production operations as food establishments under this chapter;
(ii) the labeling of products from a cottage food production operation as "Home Produced"; and
(iii) other exceptions to the chapter that the department determines are appropriate and that are consistent with this section.
(3) Rules adopted pursuant to Subsection (2):
(a) may not require:
(i) the use of commercial surfaces such as stainless steel counters or cabinets;
(ii) the use of a commercial grade:
(A) sink;
(B) dishwasher; or

(C) oven;

(iii) a separate kitchen for the cottage food production operation; or

(iv) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation; and

(b) may require:

(i) an inspection of a cottage food production operation:

(A) prior to issuing a registration for the cottage food production operation; and

(B) at other times if the department has reason to believe the cottage food production operation is operating:

(I) in violation of this chapter or an administrative rule adopted pursuant to this section; or

(II) in an unsanitary manner; and

(ii) the use of finished and cleanable surfaces.

(4) (a) The operator of a cottage food production operation shall:

(i) register with the department as a cottage food production operation before operating as a cottage food production operation; and

(ii) hold a valid food handler's permit.

(b) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the department shall issue a registration to an applicant for a cottage food production operation if the applicant for the registration:

(i) passes the inspection required by Subsection (3)(b);

(ii) pays the fees required by the department; and

(iii) meets the requirements of this section.

(5) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) does not have jurisdiction to regulate the production of food at a cottage food production operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(6) A food service establishment as defined in Section 26-15a-102 may not use a product produced in a cottage food production operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

Amended by Chapter 382, 2008 General Session

4-5-10. Food processed, labeled, or repacked at another location -- Exemption from labeling requirements by rule.

(1) The department shall adopt rules exempting food from any labeling requirement of this chapter that is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that the food is not adulterated or misbranded under this chapter upon removal from such processing, labeling or repacking establishment.

(2) (a) Regulations now or hereafter adopted under authority of the Federal

Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., relating to the exemptions described in Subsection (1) are automatically effective in this state.

(b) The department may adopt additional rules or amendments to existing rules concerning exemptions.

Amended by Chapter 179, 2007 General Session

4-5-11. Substances considered unsafe -- Authority in department to regulate quantity and use.

(1) (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, with respect to any particular use or intended use, is considered to be unsafe for the purpose of application of Subsection 4-5-7(1)(b) unless:

(i) there is in effect a rule adopted pursuant to this section or Section 4-5-17 limiting the quantity of the substance; and

(ii) the use or intended use of the substance conforms to the terms prescribed by the rule.

(b) While the rules relating to the substance are in effect, a food may not, by reason of bearing or containing the substance in accordance with the rules, be considered adulterated within the meaning of Subsection 4-5-7(1)(a).

(2) The department may make rules, which may or may not be in accordance with regulations made under the federal act, prescribing:

(a) tolerances, including zero tolerances, for:

(i) added poisonous or deleterious substances;

(ii) food additives;

(iii) pesticide chemicals in or on raw agricultural commodities; or

(iv) color additives;

(b) exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities; or

(c) conditions under which a food additive or a color additive may be safely used and exemptions when a food additive or color additive may be used solely for investigational or experimental purposes.

(3) The department may make these rules upon its own initiative or upon the petition of any interested party. It is incumbent upon the petitioner to establish by data submitted to the department that the rule is necessary to protect the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether the rule should be made, the department may require additional data to be submitted. Failure to comply with the request is sufficient grounds to deny the request.

(4) In making the rules, the department shall consider, among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning the substance including:

(i) where available;

(ii) its chemical identity and composition;

(iii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions;

(iv) specimens of proposed labeling; and

(v) all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of any substance formed in or on a food resulting from the use of the substance;

(c) the probable consumption of the substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of the substances for the uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) the substance in or on food;

(ii) any substance formed in or on food because of the use of the substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of the substance will serve a useful purpose.

Amended by Chapter 157, 1990 General Session

4-5-15. Consumer commodities -- Labeling and packaging.

(1) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of 15 U.S.C. Sec. 1453 and the regulations promulgated pursuant thereto: provided, that consumer commodities exempted from 15 U.S.C. Sec. 1453(4) shall also be exempt from this Subsection (1).

(2) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity in terms of weight, measure, or numerical count for each serving.

(3) (a) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (1), but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents.

(b) Supplemental statements of net quantity of contents may not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(4) (a) Whenever the department determines that rules other than those prescribed by Subsection (1) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the department shall promulgate rules effective to:

(i) establish and define standards for the characterization of the size of a

package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing the commodity, but this Subsection (4) does not authorize any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(ii) regulate the placement upon any package containing any commodity, or upon any label affixed to a commodity, of any printed matter stating or representing by implication that the commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers by reason of the size of that package or the quantity of its contents;

(iii) require that the label on each package of a consumer commodity bear:

(A) the common or usual name of such consumer commodity, if any; and

(B) if the consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this Subsection (4) shall be considered to require that any trade secret be divulged; or

(iv) prevent the nonfunctional slack-fill of packages containing consumer commodities.

(b) For the purposes of Subsection (4)(a)(iv), a package is nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than:

(i) protection of the contents of such package; or

(ii) the requirements of machines used for enclosing the contents in such package; provided, that the department may adopt any rules promulgated according to the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453.

Amended by Chapter 378, 2010 General Session

4-5-16. Food advertisement false or misleading.

An advertisement of a food is considered to be false if it is false or misleading in any way.

Amended by Chapter 157, 1990 General Session

4-5-17. Authority to make and enforce rules.

(1) The department may adopt rules to efficiently enforce this chapter, and if practicable, adopt rules that conform to the regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(2) Hearings authorized or required by this chapter shall be conducted by the department or by an officer, agent, or employee designated by the department.

(3) (a) Except as provided by Subsection (3)(b), all pesticide chemical regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the pesticide chemical regulations in this state.

(b) The department may adopt a rule that prescribes tolerance for pesticides in finished foods in this state whether or not in accordance with regulations promulgated under the federal act.

(4) (a) Except as provided by Subsection (4)(b), all food additive regulations and

their amendments now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the food additive regulations in this state.

(b) The department may adopt a rule that prescribes conditions under which a food additive may be used in this state whether or not in accordance with regulations promulgated under the federal act.

(5) All color additive regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the color additive rules in this state.

(6) (a) Except as provided by Subsection (6)(b), all special dietary use regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the special dietary use rules in this state.

(b) The department may, if it finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use rules whether or not in accordance with regulations promulgated under the federal act.

(7) (a) Except as provided by Subsection (7)(b), all regulations adopted under the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453 et seq., shall be the rules in this state.

(b) Except as provided by Subsection (7)(c), the department may, if it finds it necessary in the interest of consumers, prescribe package and labeling rules for consumer commodities, whether or not in accordance with regulations promulgated under the federal act.

(c) The department may not adopt rules that are contrary to the labeling requirements for the net quantity of contents required according to 15 U.S.C. Sec. 1453(4).

(8) (a) A federal regulation automatically adopted according to this chapter takes effect in this state on the date it becomes effective as a federal regulation.

(b) The department shall publish all other proposed rules in publications prescribed by the department.

(c) (i) A person who may be adversely affected by a rule may, within 30 days after a federal regulation is automatically adopted, or within 30 days after publication of any other rule, file with the department, in writing, objections and a request for a hearing.

(ii) The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the rule.

(d) (i) If no substantial objections are received and no hearing is requested within 30 days after publication of a proposed rule, it shall take effect on a date set by the department.

(ii) The effective date shall be at least 60 days after the time for filing objections has expired.

(e) (i) If timely substantial objections are made to a federal regulation within 30 days after it is automatically adopted or to a proposed rule within 30 days after it is published, the department, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections.

(ii) Any interested person or his representative may be heard.

(f) (i) The department shall act upon objections by order and shall mail the order

to objectors by certified mail as soon after the hearing as practicable.

(ii) The order shall be based on substantial evidence in the record of the hearing.

(g) (i) If the order concerns a proposed rule, it may withdraw it or set an effective date for the rule as published or as modified by the order.

(ii) The effective date shall be at least 60 days after publication of the order.

(9) Whenever a regulation is promulgated under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., establishing standards for food, the tolerances established by the department under this chapter shall immediately conform to the standards established by the Federal Food and Drug Administration as herein provided and shall remain the same until the department determines that for reasons peculiar to Utah a different rule should apply.

Amended by Chapter 179, 2007 General Session

4-5-18. Inspection of premises and records -- Authority to take samples -- Inspection results reported.

(1) An authorized agent of the department upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) enter at reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce or after introduction into commerce;

(b) enter any vehicle being used to transport or hold food in commerce;

(c) inspect at reasonable times and within reasonable limits and in a reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling located within it;

(d) obtain samples necessary for the enforcement of this chapter so long as the department pays the posted price for the sample if requested to do so and receives a signed receipt from the person from whom the sample is taken;

(e) have access to and copy all records of carriers in commerce showing:

(i) the movement in commerce of any food;

(ii) the holding of food during or after movement in commerce; and

(iii) the quantity, shipper, and consignee of food.

(2) Evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence was obtained.

(3) Carriers may not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

(4) Upon completion of the inspection of a factory, warehouse, consulting laboratory, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food in the establishment:

(a) consists in whole or in part of any filthy, putrid, or decomposed substance; or

(b) has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered

injurious to health.

(5) A copy of the report shall be sent promptly to the department.

(6) If the authorized agent making the inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, the agent shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(7) When in the course of the inspection the officer or employee making the inspection obtains a sample of any food and an analysis is made of the sample for the purpose of ascertaining whether the food consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

Amended by Chapter 378, 2010 General Session

4-5-19. Publication of reports and information.

(1) The department shall publish reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and its disposition.

(2) The department shall disseminate information regarding food which it considers necessary in the interest of public health and for the protection of consumers against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of investigations made by it.

Amended by Chapter 157, 1990 General Session

4-5-20. Food designated as raw honey.

(1) As used in this section:

(a) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants that the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate, store, and leave in the honeycomb to ripen and mature.

(b) "Raw honey" means honey:

(i) as it exists in the beehive or as obtained by extraction, settling, or straining;

(ii) that is minimally processed; and

(iii) that is not pasteurized.

(2) Honey that is produced, packed, repacked, distributed, or sold in this state may only be labeled and designated as raw honey if it meets:

(a) the definition of raw honey in this section; and

(b) any additional requirements imposed by the department by rule.

(3) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish labeling requirements consistent with the provisions of this section.

Enacted by Chapter 156, 2011 General Session

4-7-1. Title.

This chapter is known as the "Livestock Dealers' Act."

Amended by Chapter 383, 2011 General Session

4-7-2. Purpose declaration.

The Legislature finds and declares that the public interest requires regulation of the sale of livestock between the producer and persons who purchase livestock for resale to protect producers from unwarranted hazard and loss in the sale of their livestock.

Amended by Chapter 383, 2011 General Session

4-7-3. Definitions.

As used in this chapter:

(1) "Agent" or "broker" means a person who, on behalf of a dealer, purchaser, or livestock market, as defined in Section 4-30-1, solicits or negotiates the consignment or purchase of livestock.

(2) "Consignor" means a person who ships or delivers livestock to a dealer for handling or sale.

(3) (a) "Dealer" means a person who:

(i) receives livestock from a person for sale on commission; and

(ii) is entrusted with the possession, management, control, or disposal of livestock for the account of that person.

(b) "Dealer" includes a livestock dealer.

(c) "Dealer" includes a person who owns or leases a feedlot.

(4) (a) "Immediate resale" means the resale of livestock within 60 days of purchase.

(b) "Immediate resale" does not include the resale of livestock culled within 60 days that were purchased for feeding or replacement.

(5) "Livestock" means cattle, swine, equines, sheep, camelidae, ratites, bison, and domesticated elk as defined in Section 4-39-102.

(6) "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

(7) "Producer" means a person who is primarily engaged in the business of raising livestock for profit.

Amended by Chapter 383, 2011 General Session

4-7-4. Unlawful to act as an agent, broker, or dealer without license -- Exception.

Except as exempted by Section 4-7-5, no person may act as an agent, broker, or dealer in this state without being licensed under this chapter.

Amended by Chapter 25, 1990 General Session

4-7-5. Exemptions.

The surety and licensing requirements of this chapter do not apply to:

(1) a livestock market that is bonded as required by laws of the United States and Title 4, Chapter 30, Livestock Markets; or

(2) a cooperative incorporated under the laws of this state or another state, except as to the receipt of livestock from a nonmember producer.

Amended by Chapter 383, 2011 General Session

4-7-6. Licenses -- Applications.

Application for an agent's, broker's, or dealer's license shall be made to the department upon forms prescribed and furnished by the department. The application shall state:

(1) the applicant's name, principal address in this state, and date of birth;

(2) the applicant's principal address in any location outside Utah;

(3) the name and principal address of the person authorized by the applicant to accept service of process in this state on behalf of the applicant during the licensure period;

(4) the name and principal address of the applicant's surety if the application is for a dealer's license;

(5) a schedule of the commissions, fees, and other charges the applicant intends to collect for services during the period of licensure;

(6) the name and address of each principal the applicant intends to represent during the period of licensure; and

(7) any other information that the department may require by rule.

Amended by Chapter 41, 1995 General Session

4-7-7. Issuance of dealer, broker, and agent licenses -- Fees -- Deposit of bond or trust agreement -- Renewal -- Refusal to issue or renew license.

(1) The commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license to a dealer within 30 days after:

(a) receipt of a proper application and financial statement;

(b) payment of a license fee determined by the department pursuant to Subsection 4-2-2(2); and

(c) the posting of a corporate surety bond, an irrevocable letter of credit, a trust fund agreement, or other security required by Section 4-7-8.

(2) Upon proper application and payment of the license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner shall issue a license to conduct business as an agent or broker.

(3) A license issued under this chapter:

(a) entitles the applicant to conduct the business described in the application through December 31 of the year in which the license is issued, subject to suspension or revocation for cause; and

(b) is renewable for a period of one year upon:

(i) receipt of a proper renewal application; and

(ii) payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

(4) A license issued under this chapter shall at all times remain the property of the state, and the licensee is entitled to its possession only for the duration of the license.

(5) The department shall refuse to issue or renew a license if the applicant:

(a) cannot produce a financial statement with sufficient assets to justify the amount of business the applicant contemplates, unless the application is for a broker's or agent's license;

(b) is in violation of this chapter or rules adopted under this chapter;

(c) has made a false or misleading statement as to the health or physical condition of livestock in connection with the buying, receiving, selling, exchanging, soliciting or negotiating the sale of, or the weighing of livestock;

(d) has failed to keep records of purchases and sales or refused to grant inspection of those records by authorized agents of the department;

(e) has failed to comply with a lawful order of the department;

(f) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with the livestock transaction;

(g) has been suspended by order of the Secretary of Agriculture of the United States Department of Agriculture under provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181 et seq.;

(h) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States Department of Agriculture; or

(i) has any unsatisfied civil judgments related to an activity for which licensing is required by this chapter.

(6) An applicant who has been refused a license or license renewal may not apply again for one year following refusal unless the department determines that the applicant is in compliance with this chapter.

Amended by Chapter 383, 2011 General Session

4-7-8. Applicant for dealer's license to post security -- Increase in amount of security posted -- Action on security authorized -- Duties of commissioner -- Option to require posting new security if action filed -- Effect of failure to post new security -- Commissioner's authority to call bond if not renewed.

(1) (a) Before a license is issued to a dealer, the applicant shall post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than $10,000 nor more than $200,000, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

(b) Any bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of producers.

(c) The bond or other security posted shall be conditioned upon:

(i) the faithful performance of contracts and the faithful accounting for and handling of livestock consigned to the dealer;

(ii) the performance of the obligations imposed under this chapter; and

(iii) the payment of court costs and attorney's fees to the prevailing party incident to any suit upon the bond or other security posted.

(2) (a) The commissioner may require a dealer who is issued a license to increase the amount of the bond or other security posted under Subsection (1)(a) if the commissioner determines the bond or other security posted is inadequate to secure performance of the dealer's obligations.

(b) The commissioner shall notify the Packers and Stockyards Administration of an increase made under Subsection (2)(a).

(c) The commissioner may suspend a dealer's license for failure to comply with Subsection (2)(a) within 10 days after notice is given to the dealer.

(3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action upon the bond or other security posted for damages against both the principal and surety.

(4) (a) If it is reported to the department by a consignor that a dealer has failed to pay in a timely manner for livestock received for sale, the commissioner shall:

(i) ascertain the name and address of each consignor who is a creditor of the dealer; and

(ii) request a verified written statement setting forth the amount claimed due from the dealer.

(b) Upon receipt of the verified statements, the commissioner shall bring an action upon the bond or other security posted on behalf of the consignors who claim amounts due from the dealer.

(5) (a) If an action is filed upon the bond or other security posted, the commissioner may require the filing of new security.

(b) Immediately upon recovery in the action, the commissioner shall require the dealer to file a new bond or other security.

(c) Failure, in either case, to file the bond or other security within 10 days after demand is cause for suspension of the license until a new bond or other security is filed.

(d) If the bond or other security posted under this section is not renewed within 10 days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

Amended by Chapter 383, 2011 General Session

4-7-9. Dealers -- Records mandated -- Records subject to inspection.

(1) A dealer who receives livestock for sale or consignment shall promptly record:

(a) the name and address of the consignor;

(b) the date received;

(c) the condition and quantity upon arrival;

(d) the date of sale for account of the producer-consignor;

(e) the sale price;

(f) an itemized statement of the charges to be paid by the producer-consignor;

(g) the individual or group identification of the livestock;

(h) the nature and amount of any claims the dealer has against third persons for overcharges or damages; and

(i) if the dealer has a direct or indirect financial interest in the business of the purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the name and address of the purchaser.

(2) (a) The dealer shall provide a copy of the livestock receipt to the producer immediately upon delivery of the product.

(b) The records required by this section shall be retained for a period of one year following the date of consignment and shall be available during business hours for inspection by the department.

(c) A consignor involved in a consignment subject to inquiry may inspect relevant records.

(3) (a) A dealer shall file an annual report of the records required under Subsection (1) with the department on a form prescribed and furnished by the department.

(b) The dealer shall file the report by April 15 following the end of a calendar year, or if the records are kept on a fiscal year basis, by 90 days after the close of the fiscal year.

(c) The commissioner may, for good cause shown or by the commissioner's own motion, grant an extension to the filing deadline under Subsection (3)(b).

(d) For purposes of this Subsection (3), "dealer" does not include a packer buyer registered to purchase livestock for slaughter only.

(e) The department shall accept reports as required by the Packers and Stockyards Administration for livestock under the Packers and Stockyards Act, 9 C.F.R. Sec. 201.97.

(f) The reports required under this Subsection (3) may be subject to audit and establish the basis for bond adequacy.

Amended by Chapter 383, 2011 General Session

4-7-10. Livestock purchases.

Livestock purchases shall be paid for as provided in the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181, et seq.

Amended by Chapter 383, 2011 General Session

4-7-11. Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist order -- Enforcement -- Review.

(1) For the purpose of enforcing this chapter the department may, upon its own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:

(a) the solicitation, receipt, sale, or attempted sale of livestock by a dealer or person assuming to act as a dealer;

(b) the failure to make a correct account of sales;

(c) the intentional making of a false statement about market conditions or the condition or quantity of livestock consigned;

(d) the failure to remit payment in a timely manner to the consignor as required by contract or by this chapter;

(e) any other consignment transaction alleged to have resulted in damage to the consignor; or

(f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.

(2) (a) After investigation upon its own motion, if the department determines that probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this chapter, the department shall issue a notice of agency action.

(b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.

(ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.

(3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the commissioner or officer shall:

(i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and

(ii) order the defendant to pay damages.

(b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged in, or is engaging in, acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.

(4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce the department's order.

(5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.

(6) (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.

(b) A livestock claim shall be made in writing within 120 days from the date of the transaction.

Amended by Chapter 383, 2011 General Session

4-7-12. Sale of livestock -- Prima facie evidence of fraud.

The following constitutes prima facie evidence of fraud in the sale of livestock:

(1) any sale of livestock at less than market price by a dealer to a person with whom the dealer has a financial interest; or

(2) any sale out of which the dealer receives part of the sale price other than the agreed commission or other agreed charges.

Amended by Chapter 383, 2011 General Session

4-7-13. Suspension or revocation -- Grounds -- Notice to producers.

(1) The department may suspend or revoke the license of and suspend or refuse all department services to a person licensed under this chapter if the department finds that the licensee has:

(a) provided false information when making an application for a license;

(b) failed to comply with this chapter or rules adopted under this chapter; or

(c) engaged in any willful conduct that is detrimental to a producer.

(2) If a license is revoked pursuant to a hearing and the decision is final, or an injunction is imposed by a civil court, the department shall, by publication in a newspaper of a general circulation in the area, notify producers of livestock in the area in which the licensee operated that the license has been revoked or a department action has been taken.

Amended by Chapter 383, 2011 General Session

4-7-13.5. Suspension of license -- Opportunity for hearing.

(1) A license may be suspended immediately if:

(a) an emergency exists which presents a clear and present danger to the public health;

(b) an inspection or sampling is refused; or

(c) the licensee's bond has been revoked or cancelled.

(2) The department shall immediately notify the person of the suspension in writing and provide an opportunity for hearing without delay.

Enacted by Chapter 24, 1985 General Session

4-7-14. Prohibited acts.

(1) A person licensed under this chapter may not:

(a) make false charges incident to the sale of livestock;

(b) wilfully fail to comply with the requirements of Section 4-7-9 or 4-7-10;

(c) fail to file a schedule of commissions and charges;

(d) reconsign livestock without the consent of the producer-consignor for the purpose of charging more than one commission;

(e) make any false statement to the detriment of the producer regarding current market conditions for livestock or about the condition or quantity of the livestock consigned for the account of the producer;

(f) engage in fraud or misrepresentation in the procurement or attempted procurement of a license; or

(g) act as a dealer or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money from any bank or other depository to the owner for the purchase price of livestock, when at the time of the making, drawing, uttering, or delivery the maker or drawer does not have sufficient funds in or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation.

(2) (a) The making, drawing, uttering, or delivery of a check, draft, or order in the circumstances specified in this section shall be evidence of an intent to defraud.

(b) As used in this section, "credit" means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order.

Amended by Chapter 383, 2011 General Session

4-8-1. Short title.

This chapter shall be known and may be cited as the "Agricultural Fair Trade Act."

Enacted by Chapter 2, 1979 General Session

4-8-2. Purpose declaration.

The Legislature finds and declares that in order to preserve the agricultural industry of this state it is necessary to protect and improve the economic status of persons engaged in the production of products of agriculture. To effectuate this policy, the Legislature determines it necessary to regulate the production and marketing of such products and to prohibit unfair and injurious trade practices. To that end this chapter shall be liberally construed.

Enacted by Chapter 2, 1979 General Session

4-8-3. Definition.

As used in this chapter, "products of agriculture" mean any product useful to the human species which results from the application of the science and art of the production of plants and animals.

Enacted by Chapter 2, 1979 General Session

4-8-4. Department functions, powers, and duties.

The department has and shall exercise the following functions, powers, and duties, in addition to those specified in Chapter 1, Short Title and General Provisions:

(1) general supervision over the marketing, sale, trade, advertising, storage, and transportation practices, used in buying and selling products of agriculture in Utah;

(2) conduct and publish surveys and statistical analyses with its own resources or with the resources of others through contract, regarding the cost of production for products of agriculture, including transportation, processing, storage, advertising, and marketing costs; regarding market locations, demands, and prices for such products; and regarding market forecasts;

(3) assist and encourage producers of products of agriculture in controlling current and prospective production and market deliveries in order to stabilize product prices at prices which assure reasonable profits for producers and at the same time ensure adequate market supplies; and

(4) actively solicit input from the public and from interested groups or associations, through public hearings or otherwise, to assist in making fair

determinations with respect to the production, marketing, and consumption of products of agriculture.

Amended by Chapter 324, 2010 General Session

4-8-5. Unlawful acts specified.

It is unlawful for any person engaged in the production, processing, handling, marketing, sale or distribution of products of agriculture to:

(1) discriminate in price between two or more producers with respect to products of agriculture of like grade and quality;

(2) use any brand, label, container, or designation on products of agriculture not authorized by the department;

(3) promote or advertise the price of any product of agriculture which is required to be graded without displaying the grade of such product with prominence equal to that of the price; or

(4) make or permit the use of any false or misleading statement on any label or stencil affixed to a container or package containing products of agriculture or in any promotion or advertisement of such products.

Enacted by Chapter 2, 1979 General Session

4-8-6. Procedure for enforcement -- Notice of agency action -- Cease and desist order -- Enforcement -- Judicial review.

(1) (a) Whenever the department has reason to believe that a person has, or is engaged in, the violation of this chapter, it shall issue a notice of agency action.

(b) If the commissioner, or a hearing officer designated by the commissioner, determines by a preponderance of the evidence that any person named in the complaint has engaged, or is engaging, in an act that violates this chapter, the officer shall:

(i) prepare written findings of fact; and

(ii) issue an order requiring the person to cease and desist from the illegal activity.

(2) The department may petition any court of competent jurisdiction for enforcement of its cease and desist order.

(3) Any person who is subject to a cease and desist order may obtain judicial review.

(4) The attorney general's office shall represent the department in any original action or appeal begun under this section.

Amended by Chapter 161, 1987 General Session

4-8-7. Defense to claim of illegal activity.

No person who acts in compliance with any rule adopted under authority of this chapter shall be considered to be engaged in any illegal conspiracy or combination in restraint of trade or to be acting in furtherance of any illegal purpose.

Amended by Chapter 179, 2007 General Session

4-9-1. Definitions.

As used in this chapter:

(1) "Correct", when used in connection with weights and measures, means conformance to applicable requirements of this chapter.

(2) "Package" means a commodity put up or packaged before sale in either wholesale or retail saleunits.

(3) "Primary standards" mean the physical standards of the state, described in Section 4-9-4, which are the legal reference from which all other standards and weights and measures are derived.

(4) "Sale from bulk" means the sale of commodities, when the quantity is determined at the time of sale.

(5) "Secondary standards" means a physical standard which is traceable to primary standards through comparisons, using acceptable laboratory procedures.

(6) "Weighing and measuring" means the use of weights and measures.

(7) "Weight" means net weight, unless the label declares that the product is sold by drained weight, in which case, "weight" means net drained weight.

(8) "Weights and measures" means weights and measures, and instruments or devices used for weighing or measuring, including an appliance or accessory associated with the instrument or device.

(9) "Weights and measures registration" means the issuance of a certificate by the commissioner to a weights and measures user.

(10) "Weights and measures user" means a person who uses weights and measures in trade or commerce.

Amended by Chapter 358, 2004 General Session

4-9-2. Authority to promulgate rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-9-3. Weights and measures -- Systems used -- Basic units, tables, and equivalents as published by National Institute of Standards and Technology.

(1) The department shall use the same system of weights and measures that is customarily used in the United States, and the metric system of weights and measures.

(2) Either system may be used for commercial purposes in the state.

(3) The definitions of basic units of weight and measure, the tables of weight and measure, and the weights and measures equivalents published by the National Institute of Standards and Technology, shall determine the weights and measures systems used within the state.

Amended by Chapter 358, 2004 General Session

4-9-4. Weights and measures -- Primary state standards -- Secondary state standards -- Verification.

(1) Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state primary standards, and shall be maintained in the calibration prescribed by the National Institute of Standards and Technology.

(2) Secondary standards may be prescribed by the department and shall be verified upon their initial receipt, and as often after initial receipt as is considered necessary by the department.

Amended by Chapter 358, 2004 General Session

4-9-5. Weights and measures -- Specifications, tolerances, and technical data published in National Institute of Standards and Technology Handbook govern.

Unless modified by the department, Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, National Institute of Standards and Technology, adopted by the National Conference on Weights and Measures, including supplements or revisions to Handbook 44, shall determine the specifications, tolerances, and other technical requirements for devices used for:

(1) commercial weighing and measuring;

(2) law enforcement;

(3) data gathering; and

(4) other weighing and measuring purposes.

Amended by Chapter 358, 2004 General Session

4-9-5.2. Adopting uniform packaging and labeling regulation.

Unless modified by the department, the Uniform Packaging and Labeling Regulation, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to packaging and labeling in the state.

Amended by Chapter 358, 2004 General Session

4-9-5.3. Adopting uniform regulation for the method of sale of commodities.

Unless modified by the department, the Uniform Regulation for the Method of Sale of Commodities, adopted by the National Conference on Weights and Measures, in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the method of sale of commodities in the state.

Amended by Chapter 358, 2004 General Session

4-9-5.4. Adopting uniform regulation for the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices.

Unless modified by the department, the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the registration of servicepersons and service agencies in the state.

Amended by Chapter 358, 2004 General Session

4-9-6. Department duties -- Seizure of incorrect weights and measures.

(1) The department may:

(a) establish weights and measures standards, specifications, and tolerances for:

(i) all commodities;

(ii) the fill for any commodity contained in a package;

(iii) labels or labeling of a commodity; and

(iv) weights and measures used commercially;

(b) inspect and test weights and measures kept, offered, or exposed for sale to determine if they are correct;

(c) inspect and test weights and measures commercially used to determine if they are correct;

(d) test all weights and measures used to check the receipt or disbursement of supplies used by a state agency or institution funded by the state;

(e) in accordance with sampling procedures recognized and designated in Handbook 133, Checking the Net Contents of Packaged Goods, National Institute of Standards and Technology, inspect and test any packaged commodity kept, offered, or exposed for sale, sold, or in the process of delivery, to determine if the package contains the amount represented;

(f) determine the appropriate term or unit of weight or measure to be used for container sizes, if the department determines that an existing practice of declaring the quantity by weight, measure, count, or any combination of these practices, hinders value comparisons by consumers;

(g) approve correct weights and measures and reject and mark as "rejected," weights and measures that are incorrect;

(h) allow reasonable variations from a stated weight or measure caused by loss or gain due to:

(i) moisture during the course of acceptable distribution practices; or

(ii) unavoidable deviations in acceptable manufacturing practices;

(i) grant an exemption from the requirements of this chapter or from any rule promulgated under this chapter, when the department determines that the exemption is necessary for the maintenance of acceptable commercial practices;

(j) maintain on file, for public inspection, a copy of each handbook prepared by the National Institute of Standards and Technology which is used to enforce this

chapter; and

(k) establish and charge fees as authorized under Subsection 4-2-2(2) for the inspection of weights and measures.

(2) The department may seize weights and measures that are:

(a) incorrect and are not corrected within a reasonable time specified by the department; or

(b) used or disposed of in a manner not authorized by the department.

Amended by Chapter 358, 2004 General Session

4-9-7. Enforcement powers of department.

(1) For the purpose of enforcing this chapter, the department may:

(a) enter any commercial premises open to the public during normal working hours after the presentation of credentials;

(b) issue in writing a "stop-use, hold, or removal order" with respect to any weights or measures commercially used or a "stop sale, use, or removal order" with respect to any packaged commodity or bulk commodity offered for sale;

(c) seize as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity offered for sale or sold in violation of this chapter;

(d) (i) seek an order of seizure or condemnation of any weight, measure, package, or sale from bulk that violates this chapter; or

(ii) upon proper grounds, obtain a temporary restraining order or permanent injunction to prevent a violation of this chapter; and

(e) stop any commercial vehicle and after presenting credentials:

(i) inspect its contents;

(ii) require the person in charge of the vehicle to produce any documents in his possession concerning the contents; or

(iii) require the person to proceed with the vehicle to some specified place for inspection.

(2) If an order has been issued under Subsection (1)(b), the weights, measures, or commodities subject to the order may not be used, moved, or offered for sale until the department issues a written release.

(3) No bond shall be required of the department in any injunctive proceeding brought under this section.

Amended by Chapter 157, 1990 General Session

4-9-8. Sale of commodities in liquid form -- Sale of commodities in nonliquid form -- Requirements.

Commodities in liquid form shall be sold by liquid measure or by weight. Commodities not in liquid form shall be sold only by weight, measure, or by count, so long as the method of sale provides accurate quantity information.

Enacted by Chapter 2, 1979 General Session

4-9-9. Bulk sales -- Information furnished to purchaser.

Whenever the quantity is determined solely by the seller, in the absence of the buyer, all bulk sales of heating fuel and other bulk sales as determined by the department shall be accompanied by a delivery ticket containing the following information:

(1) the name and address of the vendor and purchaser;

(2) the date delivered;

(3) the quantity delivered and the quantity upon which the price is based, if different from the delivered quantity;

(4) a description of the bulk material sold, including any quality representation made in connection with the sale; and

(5) the number of individually wrapped packages.

Amended by Chapter 30, 1992 General Session

4-9-10. Packaged commodity sales -- Labeling information specified -- When price per single unit of weight to be displayed.

(1) Any packaged commodity offered for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(a) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(b) the quantity of contents in terms of weight, measure, or count; and

(c) the name and place of business of the manufacturer, packer, or distributor, if the packaged commodity is offered for sale, or sold other than on the premises where packaged.

(2) Any package which is one of a lot containing random weights of the same commodity and bearing the total sales price of the package shall, in addition to compliance with Subsection (1) of this section, bear on the outside of the package a definite, plain, and conspicuous declaration of the price per single unit of weight.

Enacted by Chapter 2, 1979 General Session

4-9-11. Advertisement of packaged commodity sales -- Requirements.

An advertisement which promotes a packaged commodity with the retail price stated shall plainly and conspicuously advertise the quantity required to appear on the package. If a dual quantity declaration is required by law, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

Amended by Chapter 19, 1985 General Session

4-9-12. Unlawful acts specified.

A person may not:

(1) sell, offer, or present for sale a commodity whose weight and measure is less than the weight and measure represented as being sold, offered, or exposed for sale;

(2) misrepresent the price of a commodity sold, advertised, exposed, or offered for sale by weight, measure, or count, or to represent the price in a manner that misleads or deceives a person;

(3) use or possess an incorrect weight or measure in commerce;

(4) remove a tag, seal, or mark from a weight or measure without specific written authorization from the department;

(5) hinder or obstruct an agent of the department dealing with weights and measures in the performance of the agent's duties; or

(6) operate weights and measures in trade or commerce for the purpose of determining the weight or measure of a commodity without a valid weights and measures registration issued by the department.

Amended by Chapter 358, 2004 General Session

4-9-13. Weighing and measuring devices -- Presumption.

If a weighing or measuring device is in a place where buying or selling is commonly carried on, there is a rebuttable presumption that the weighing or measuring device is regularly used for the business purposes of that place.

Enacted by Chapter 2, 1979 General Session

4-9-15. Registration of commercial establishments using weights and measures -- Approved weights and measures inspectors -- Application -- Fee -- Expiration -- Renewal.

(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of weights and measures users and issuance of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.

(b) The division may:

(i) determine whether weights and measures are correct through:

(A) inspection and testing by department employees; or

(B) acceptance of an inspection and testing report prepared by a registered weights and measures service person;

(ii) establish standards and qualifications for registered weights and measures service persons; and

(iii) determine the form and content of an inspection and testing report.

(c) A weights and measures user shall register with the department.

(d) Prior to granting a registration to a weights and measures user, the department shall determine whether the weights and measures user complies with the rules established under Subsection (1)(a).

(e) An applicant shall register with the department, in writing, using forms required by the department.

(f) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(g) If the applicant does not meet the qualifications of registration, the

department shall notify the applicant, in writing, that the applicant's registration is denied.

(h) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant shall correct the deficiencies within the time period specified in the notice to receive a registration.

(i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights and measures user a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of weights and measures users.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the weights and measures user;

(b) the registration issuance and expiration date; and

(c) the number and type of weights and measures devices to be certified.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the requirements of Section 4-9-12 are violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all requirements under Section 4-9-12 are being met, the department shall reinstate the registration.

(5) (a) A weights and measures user, registered under this section, shall allow the department access to the weights and measures user's place of business to determine if the weights and measures user is complying with the registration requirements.

(b) If a weights and measures user denies access for an inspection required under Subsection (5)(a), the department may suspend the weights and measures user's registration until the department is allowed access to the weights and measures user's place of business.

Amended by Chapter 378, 2010 General Session

4-10-1. Short title.

This chapter shall be known and may be cited as the "Bedding, Upholstered Furniture, and Quilted Clothing Inspection Act."

Enacted by Chapter 2, 1979 General Session

4-10-2. Definitions.

As used in this chapter:

(1) "Article" means any bedding, upholstered furniture, quilted clothing, or filling material.

(2) "Bedding" means any:

(a) quilted, packing, mattress or hammock pad; or

(b) mattress, boxsprings, comforter, quilt, sleeping bag, studio couch, pillow or cushion made with any filling material that can be used for sleeping or reclining.

(3) "Filling material" means any cotton, wool, kapok, feathers, down, hair or other material, or any combination of material, whether loose or in bags, bales, batting, pads, or other prefabricated form that is, or can be, used in bedding, upholstered furniture or quilted clothing.

(4) "Label" means the display of written, printed, or graphic matter upon a tag or upon the immediate container of any bedding, upholstered furniture, quilted clothing, or filling material.

(5) (a) "Manufacture" means to make, process, or prepare from new or secondhand material, in whole or in part, any bedding, upholstered furniture, quilted clothing, or filling material for sale.

(b) "Manufacture" does not include isolated sales of such articles by persons who are not primarily engaged in the making, processing, or preparation of such articles.

(6) (a) "New material" means material that has not previously been used in the manufacture of another article used for any purpose.

(b) "New material" includes by-products from a textile mill using only new raw material synthesized from a product that has been melted, liquified, and re-extruded.

(7) "Owner's own material" means an article owned or in the possession of a person for the person's own or a tenant's use that is sent to another person for manufacture or repair.

(8) "Quilted clothing" means a quilted garment or apparel, exclusive of trim used for aesthetic effect, or a stiffener, shoulder pads, interfacing, or other material that is made in whole or in part from filling material and sold or offered for sale.

(9) "Repair" means to restore, recover, alter, or renew bedding, upholstered furniture, or quilted clothing for a consideration.

(10) "Retailer" means a person who sells bedding, upholstered furniture, quilted clothing, or filling material to a consumer for use primarily for personal, family, household, or business purposes.

(11) (a) "Sale" or "sell" means to offer or expose for sale, barter, trade, deliver, consign, lease, or give away any bedding, upholstered furniture, quilted clothing, or filling material.

(b) "Sale" or "sell" does not include any judicial, executor's, administrator's, or guardian's sale of such items.

(12) "Secondhand material" means any filling material that has previously been used in an article.

(13) "Tag" means a card, flap, or strip attached to an article for the purpose of displaying information required by this chapter or under rule made pursuant to it.

(14) "Upholstered furniture" means any portable or fixed furniture, except fixed seats in motor vehicles, boats, or aircraft, that is made in whole or in part with filling material, exclusive of trim used for aesthetic effect.

(15) "Wholesaler" means a person who offers an article for resale.

Amended by Chapter 73, 2010 General Session

4-10-3. Authority to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-10-4. Manufacture, repair, or wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material -- License required.

It is unlawful for any person to engage in the manufacture, repair, or wholesale sale of any bedding, upholstered furniture, quilted clothing, or filling material without a license issued by the department.

Enacted by Chapter 2, 1979 General Session

4-10-5. License -- Application -- Fees -- Expiration -- Renewal.

(1) (a) Application for a license to manufacture, repair, or to engage in the wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material shall be made to the department on forms prescribed and furnished by the department.

(b) Upon receipt of a proper application and payment of the appropriate license fee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue to the applicant a license to engage in the particular activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(c) A person doing business under more than one name shall be licensed for each name under which business is conducted.

(2) The annual license fee for each license issued under this chapter shall be determined by the department pursuant to Subsection 4-2-2(2).

(3) Each license issued under this chapter is renewable for a period of one year upon the payment of the applicable amount for the particular license sought to be renewed on or before December 31 of each year.

(4) A person who holds a valid manufacturer's license may, upon application, be licensed as a wholesale dealer, supplier, or repairer without the payment of an additional license fee.

(5) A person who fails to renew a license and engages in conduct requiring a license under this chapter shall pay the applicable license fee for each year in which the person engages in conduct requiring a license for which a license is not renewed.

(6) The department may retroactively collect a fee owed under Subsection (5).

Amended by Chapter 73, 2010 General Session

4-10-6. Unlawful acts specified.

It is unlawful for any person to:

(1) sell bedding, upholstered furniture, quilted clothing, or filling material as new

unless it is made from new material and properly tagged;

(2) sell bedding, upholstered furniture, quilted clothing or filling material made from secondhand material which is not properly tagged;

(3) use burlap or other material which has been used for packing or baling, or to use any unsanitary, filthy, or vermin or insect infected filling material in the manufacture or repair of any article;

(4) sell bedding, upholstered furniture, quilted clothing or filling material which is not properly tagged regardless of point of origin;

(5) use any false or misleading statement, term, or designation on any tag; or

(6) use any false or misleading label.

Enacted by Chapter 2, 1979 General Session

4-10-7. Tagging requirements for bedding, upholstered furniture, and filling material.

(1) (a) All bedding, upholstered furniture, and filling material shall be securely tagged by the manufacturer or repairer.

(b) Tags shall be at least six square inches and plainly and indelibly labeled with:

(i) information as the department requires by rule; and

(ii) according to the filling material type, the words "All New Material," "Secondhand Material," or "Owner's Material," stamped or printed on the label.

(c) Each label shall be placed on the article in such a position as to facilitate ease of examination.

(2) (a) If more than one type of filling material is used, its component parts shall be listed in descending order by weight or by percentages.

(b) If descriptive statements are made about the frame, cover, or style of the article, such statements shall, in fact, be true.

(c) All quilted clothing shall be tagged and labeled in conformity with the Federal Textile Fiber Products Identification Act, 15 U.S.C. Sec. 70 through 70k.

(3) No person, except the purchaser, may remove, deface, or alter a tag attached according to this chapter.

Amended by Chapter 179, 2007 General Session

4-10-8. Use of rubber stamp or stencil authorized -- Conditions for use.

A rubber stamp or stencil may be used instead of a tag on articles with slip covers if the article has a smooth backing, or on suitable surfaces of containers or bales of filling material; provided, the information required by Section 4-10-7 is indelible and legible.

Enacted by Chapter 2, 1979 General Session

4-10-9. Sale of bedding, upholstered furniture, quilted clothing, or filling material -- Tag, stamp, or stencil required -- Secondhand material to bear tag -- Presumption -- Owner's own material to be tagged.

No wholesaler or retailer shall sell any bedding, upholstered furniture, quilted clothing, or prefabricated filling material, whether the point of origin of such article is inside or outside the state, unless it is appropriately tagged under Section 4-10-7, or unless it is appropriately stamped or stenciled under Section 4-10-7 or 4-10-8. A retailer who sells used articles shall attach a secondhand material tag before sale. Possession of an article by a person who regularly engages in the manufacture, repair, wholesale, or supply of such articles is presumptive evidence of intent to sell.

A person who repairs "owner's own material" shall immediately upon its receipt attach an owner's material tag to the article. The tag shall remain attached to the article until it is actually in the process of repair and shall be reattached upon completion of repair.

Enacted by Chapter 2, 1979 General Session

4-10-10. Enforcement -- Inspection authorized -- Samples -- Reimbursement for samples -- Warrants.

(1) (a) The department may access public and private premises where articles subject to this chapter are manufactured, repaired, stored, or sold for the purpose of determining compliance with this chapter.

(b) For purposes of determining compliance, the department may:

(i) open any upholstered furniture, bedding, or quilted clothing to obtain a sample for inspection and analysis of filling material; or

(ii) if considered appropriate by the department, take the entire article for inspection and analysis.

(c) Upon request, the department shall reimburse the owner or person from whom a sample or article is taken in accordance with this Subsection (1) for the actual cost of the sample or article.

(2) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and taking samples or articles.

Amended by Chapter 73, 2010 General Session

4-10-11. Stop sale, use, or removal order authorized -- Conditions for release specified -- Condemnation or seizure -- Procedure specified -- Award of costs authorized.

(1) The department may issue a "stop sale, use, or removal order" to any manufacturer, repairer, wholesaler, or retailer of any designated article or articles which it finds or has reason to believe violates this chapter. The order shall be in writing and no article subject to it shall be removed, offered, or exposed for sale, except upon subsequent written release by the department. Before a release is issued, the department may require the manufacturer, repairer, wholesaler, or retailer of the "stopped" article to pay the expense incurred by the department in connection with the withdrawal of the article from the market.

(2) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any article which violates this chapter or, upon

proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(3) If condemnation is ordered, the article shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the article an opportunity to apply to the court for permission to bring the article into conformance, or for permission to remove it from the state.

(4) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the article.

Enacted by Chapter 2, 1979 General Session

4-11-1. Short title.

This chapter shall be known and may be cited as the "Utah Bee Inspection Act."

Enacted by Chapter 2, 1979 General Session

4-11-2. Definitions.

As used in this chapter:

(1) "Abandoned apiary" means any apiary:

(a) to which the owner or operator fails to give reasonable and adequate attention during a given year, with the result that the welfare of a neighboring colony is jeopardized; or

(b) that is not properly identified in accordance with this chapter.

(2) "Apiary" means any place where one or more colonies of bees are located.

(3) "Apiary equipment" means hives, supers, frames, veils, gloves, or other equipment used to handle or manipulate bees, honey, wax, or hives.

(4) "Appliance" means any apparatus, tool, machine, or other device used to handle or manipulate bees, wax, honey, or hives.

(5) "Bee" means the common honey bee, Apis mellifera, at any stage of development.

(6) (a) "Beekeeper" means a person who keeps bees in order to:

(i) collect honey and beeswax;

(ii) pollinate crops; or

(iii) produce bees for sale to other beekeepers.

(b) "Beekeeper" includes an apiarists.

(7) "Colony" means an aggregation of bees in any type of hive that includes queens, workers, drones, or brood.

(8) "Disease" means any disease or abnormal condition of the egg, larval, pupal, or adult stage of bee development.

(9) "Hive" means a frame hive, box hive, box, barrel, log, gum skep, or other artificial or natural receptacle that may be used to house bees.

(10) "Package" means any number of bees in a bee-tight container, with or without a queen, and without comb.

(11) "Parasite" means an organism that parasitizes any developmental stage of a bee.

(12) "Pest" means an organism that:

(a) inflicts damage to a bee or bee colony directly or indirectly; or

(b) may damage apiary equipment in a manner that is likely to have an adverse affect on the health of the colony or an adjacent colony.

(13) "Raise" means:

(a) to hold a colony of bees in a hive for the purpose of pollination, honey production, study, or similar purpose; and

(b) when the person holding a colony, holds the colony or a package of bees in the state for a period of time exceeding 30 days.

(14) "Terminal disease" means a pest, parasite, or pathogen that will kill an occupant colony or subsequent colony on the same equipment.

Amended by Chapter 73, 2010 General Session

4-11-3. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as it considers necessary for the administration and enforcement of this chapter. Such rules shall include provisions for the identification of each apiary within the state.

Amended by Chapter 382, 2008 General Session

4-11-4. Bee raising -- Registration required -- Application -- Fees -- Renewal -- Wax-salvage plants -- License required -- Application -- Fees -- Renewal.

(1) (a) A person may not raise bees in this state without being registered with the department.

(b) Application for registration to raise bees shall be made to the department upon tangible or electronic forms prescribed and furnished by the department, within 30 days after the person:

(i) takes possession of the bees; or

(ii) moves the bees into the state.

(c) Nothing in Subsection (1)(b) limits the requirements of Section 4-11-11.

(d) An application in accordance with this chapter shall specify:

(i) the name and address of the applicant;

(ii) the number of bee colonies owned by the applicant at the time of the application that will be present in the state for a period exceeding 30 days; and

(iii) any other relevant information the department considers appropriate.

(e) Upon receipt of a proper application and payment of an annual registration fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner shall issue a registration to the applicant valid through December 31 of the year in which the registration is issued, subject to suspension or revocation for cause.

(f) A bee registration is renewable for a period of one year upon the payment of an annual registration renewal fee as determined by the department pursuant to Subsection 4-2-2(2).

(g) Registration shall be renewed on or before December 31 of each year.

(2) (a) A person may not operate a wax-salvage plant without a license issued by the department.

(b) Application for a license to operate a wax-salvage plant shall be made to the department upon tangible or electronic forms prescribed and furnished by the department.

(c) The application shall specify such information as the department considers appropriate.

(d) Upon receipt of a proper application and payment of a license fee as determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license entitling the applicant to operate a wax-salvage plant through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(e) A wax-salvage license is renewable for a period of one year, on or before December 31 of each year, upon the payment of an annual license renewal fee as determined by the department pursuant to Subsection 4-2-2(2).

Amended by Chapter 73, 2010 General Session

4-11-5. County bee inspector -- Appointment -- Termination -- Compensation.

(1) The county executive upon the petition of five or more persons who raise bees within the respective county shall, with the approval of the commissioner, appoint a qualified person to act as a bee inspector within the county.

(2) A county bee inspector shall be employed at the pleasure of the county executive and the commissioner, and is subject to termination of employment, with or without cause, at the instance of either.

(3) Compensation for the county bee inspector shall be fixed by the county legislative body.

(4) To be appointed a county bee inspector, a person shall demonstrate adequate training and knowledge related to this chapter, bee diseases, and pests.

(5) A record concerning bee inspection shall be kept by the county executive or commissioner.

(6) The county executive and the commissioner shall investigate a formal, written complaint against a county bee inspector.

(7) The department may authorize an inspection if:

(a) a county bee inspector is not appointed; and

(b) a conflict of interest arises with a county bee inspector.

Amended by Chapter 73, 2010 General Session

4-11-6. Hives to have removable frames -- Consent of county bee inspector to sell or transport diseased bees.

(1) A person may not house or keep bees in a hive unless it is equipped with movable frames to all its parts so that access to the hive can be had without difficulty.

(2) No person who owns or has possession of bees (whether queens or

workers) with knowledge that they are infected with terminal disease, parasites, or pests, or with knowledge that they have been exposed to terminal disease, parasites, or pests, shall sell, barter, give away, or move the bees, colonies, or apiary equipment without the consent of the county bee inspector or the department.

Amended by Chapter 73, 2010 General Session

4-11-7. Inspector -- Duties -- Diseased apiaries -- Examination of diseased bees by department -- Election to transport bees to wax-salvage plant.

(1) The county bee inspector or the department shall inspect all apiaries within the county at least once each year and, also, inspect immediately any apiary within the county that is alleged in a written complaint to be severely diseased, parasitized, or abandoned.

(2) If, upon inspection, the inspector determines that an apiary is diseased or parasitized, the inspector shall take the following action based on the severity of the disease or parasite present:

(a) prescribe the course of treatment that the owner or caretaker of the bees shall follow to eliminate the disease or parasite;

(b) personally, for the purpose of treatment approved by the department, take control of the afflicted bees, hives, combs, broods, honey, and equipment; or

(c) destroy the afflicted bees and, if necessary, their hives, combs, broods, honey, and all appliances that may have become infected.

(3) If, upon reinspection, the inspector determines that the responsible party has not executed the course of treatment prescribed by Subsection (2), the inspector may take immediate possession of the afflicted colony for control or destruction in accordance with Subsection (2)(b) or (c).

(4) (a) The owner of an apiary who is dissatisfied with the diagnosis or course of action proposed by an inspector under this section may, at the owner's expense, have the department examine the alleged diseased bees.

(b) The decision of the commissioner with respect to the condition of bees at the time of the examination is final and conclusive upon the owner and the inspector involved.

(5) The owner of a diseased apiary, notwithstanding the provisions of Subsections (2), (3), and (4), may elect under the direction of the county bee inspector to kill the diseased bees, seal their hives, and transport them to a licensed wax-salvage plant.

Amended by Chapter 73, 2010 General Session

4-11-8. County bee inspector -- Disinfection required before leaving apiary with diseased bees.

(1) Before leaving the premises of any apiary where disease exists, the county bee inspector, or any assistant, shall thoroughly disinfect any part of the inspector's own person, clothing, or any appliance that has come in contact with infected material.

(2) The method of disinfection required by Subsection (1):

(a) may be determined by the department; and

(b) shall be sufficient to destroy disease, parasites, and pathogens encountered.

(3) A county bee inspector shall maintain a record of each inspection, including disinfection practices.

(4) The county executive or the commissioner may review a county bee inspector's records kept in accordance with Subsection (3).

Amended by Chapter 73, 2010 General Session

4-11-9. Inspection of apiaries where queen bees raised for sale -- Honey from apiaries where queen bees raised for sale not to be used for candy for mailing cages unless boiled.

(1) (a) At least twice each summer the county bee inspector shall inspect each apiary in which queen bees are raised for sale.

(b) A person may not sell or transport any queen bee from an apiary that is found to be infected with disease, without the consent of the county bee inspector or the department.

(2) No person engaged in raising queen bees for sale shall use any honey for making candy for mailing cages that has not been boiled for at least 30 minutes.

(3) A person rearing queens shall follow standard methods for minimizing or eliminating unmanageably aggressive stock.

Amended by Chapter 73, 2010 General Session

4-11-10. Enforcement -- Inspections authorized -- Warrants.

(1) The department and all county bee inspectors shall have access to all apiaries or places where bees, hives, and appliances are kept for the purpose of enforcing this chapter.

(2) If admittance is refused, the department, or the county bee inspector involved, may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making an inspection.

Amended by Chapter 73, 2010 General Session

4-11-11. Importation of bees or appliances into state -- Certification required -- Inspection discretionary -- Authority to require destruction or removal of diseased bees and appliances.

(1) (a) A person may not bring or import any bees in packages or hives or bring or import any used beekeeping equipment or appliances into this state, except after obtaining a certificate from an inspector authorized in the state of origin certifying that the bees, apiary equipment, or appliances have been inspected within the current production season, and that all diseased colonies in the apiary at the time of the inspection were destroyed or removed to a licensed wax-salvage plant before the issuance of the certificate.

(b) A person bringing or importing bees into the state shall advise the department of the address of the bees destination and furnish the department with a

copy of the certificate of inspection either:

(i) within at least five working days before the bees enter the state; or

(ii) upon entry into the state.

(c) A person intending to hold bees in the state for a period of time exceeding 30 days shall comply with Section 4-11-4.

(2) (a) A person may not bring or import any used apiary equipment, except after obtaining a certificate from an inspector authorized in the state of origin certifying that all potentially pathogen-conductive apiary equipment or appliances are appropriately sterilized immediately before importation.

(b) A person bringing or importing used apiary equipment shall advise the department of the address of the destination in the state and furnish the department with a copy of the certificate of inspection either:

(i) within at least five working days before the bees enter the state; or

(ii) upon entry into the state.

(3) Used apiary equipment or appliances that have been exposed to terminal disease may not be sold without the consent of the county bee inspector or the commissioner.

(4) In lieu of Subsection (1), the certificate may be a Utah certificate.

(5) (a) If the department determines it is necessary for any reason to inspect any bees, apiary equipment, or appliance upon arrival at a destination in this state, and upon this inspection finds terminal disease, the department shall cause all diseased colonies, appliances, and equipment to be either:

(i) destroyed immediately; or

(ii) removed from the state within 48 hours.

(b) The costs under Subsection (5)(a)(i) or (ii) shall be paid by the person bringing the diseased colonies, appliances, or equipment into the state.

Amended by Chapter 73, 2010 General Session

4-11-12. Quarantine authorized.

The commissioner, in order to protect the bee industry of the state against bee health or management issues, may quarantine the entire state, an entire county, or any apiary or specific hive within the state, as the commissioner considers necessary.

Amended by Chapter 73, 2010 General Session

4-11-13. Unlawful acts specified.

It is unlawful for a person to:

(1) extract honey in any place where bees can gain access either during or after the extraction process;

(2) remove honey or wax, or attempt to salvage, or salvage any hives, apiary equipment, or appliances from a diseased colony, except in a licensed wax-salvage plant, unless specifically authorized by a county bee inspector or the commissioner;

(3) maintain any neglected or abandoned hives, apiary equipment, or appliances other than in an enclosure that prohibits the entrance of bees;

(4) raise bees without being registered with the department;

(5) operate a wax-salvage plant without a license;

(6) store an empty hive body, apiary equipment, or appliances in a manner that may propagate pests, disease, or bee feeding frenzy; or

(7) knowingly sell a colony, apiary equipment, or appliances that are inoculated with terminal disease pathogens.

Amended by Chapter 73, 2010 General Session

4-11-14. Maintenance of abandoned apiary, equipment, or appliance -- Nuisance.

(1) It is a public nuisance to keep or maintain an abandoned apiary, apiary equipment, or appliance other than in an enclosure that prohibits the entry of bees.

(2) Items listed in Subsection (1) are subject to seizure and destruction by the county bee inspector.

(3) Upon discovery of, or receipt of a written complaint concerning, an abandoned apiary site, apiary equipment, or appliance, the county bee inspector shall attempt to notify the registered owner, if any.

(4) (a) A registered owner notified under Subsection (3) shall remove the abandoned apiary, apiary equipment, or appliance or provide a bee-proof enclosure within 15 days.

(b) The county bee inspector or the department shall verify the removal or protection in accordance with Subsection (4)(a) at the expiration of the 15-day period.

(c) If a registered owner does not comply with Subsection (4)(a), the county bee inspector or the department may seize and destroy the abandoned apiary, apiary equipment, and appliances.

(5) A county bee inspector or the department may seize and destroy an abandoned apiary, apiary equipment, or appliances if the abandoned apiary, apiary equipment, or appliances do not indicate a registered owner.

Amended by Chapter 73, 2010 General Session

4-11-15. Wax-salvage operations -- County bee inspector to supervise compliance with rules -- Salvage procedures specified.

(1) All wax-salvage operations with respect to wax, hives, apiary equipment, and appliances that have been exposed to disease pathogens shall be performed under the direction and supervision of the county bee inspector according to procedures established by rules of the department.

(2) A wax salvage operation shall be conducted in an enclosure that is tightly double-screened to prevent the possible entrance of bees.

(3) Entrance to the enclosure shall be through a vestibule, double-screened in the same manner as the enclosure, with tight-fitting doors at each end.

(4) All boiling or melting of any noncontaminated apiary equipment, such as cappings, honey supers, hives, or frames shall be done in a bee tight enclosure.

Amended by Chapter 73, 2010 General Session

4-11-17. Maintaining gentle stock.

A beekeeper may not intentionally maintain an aggressive or unmanageable stock, whether African or European in origin.

Enacted by Chapter 73, 2010 General Session

4-12-1. Short title.

This chapter is known as the "Utah Commercial Feed Act."

Amended by Chapter 30, 1992 General Session

4-12-2. Definitions.

As used in this chapter:

(1) "Adulterated commercial feed" means any commercial feed:

(a) (i) that contains any poisonous or deleterious substance that may render it injurious to health;

(ii) that contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe within the meaning of 21 U.S.C. Sec. 346, other than a pesticide chemical in or on a raw agricultural commodity or a food additive;

(iii) that contains any food additive or color additive that is unsafe within the meaning of 21 U.S.C. Sec. 348 or 379e;

(iv) that contains a pesticide chemical in or on a raw agricultural commodity which is unsafe within the meaning of 21 U.S.C. Sec. 346a unless it is used in or on the raw agricultural commodity in conformity with an exemption or tolerance prescribed under 21 U.S.C. Sec. 346a and is subjected to processing such as canning, cooking, freezing, dehydrating, or milling, so that the residue, if any, of the pesticide chemical in or on such processed feed is removed to the extent possible through good manufacturing practices as prescribed by rules of the department so that the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity in 21 U.S.C. Sec. 346a;

(v) that contains viable weed seeds in amounts exceeding limits established by rule of the department; or

(vi) that contains a drug that does not conform to good manufacturing practice as prescribed by federal regulations promulgated under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., for medicated feed premixes and for medicated feeds unless the department determines that such regulations are not appropriate to the conditions that exist in this state; or

(b) that has a valuable constituent omitted or abstracted from it, in whole or in part, or its composition or quality falls below or differs from that represented on its label or in labeling.

(2) "Brand name" means any word, name, symbol, or device that identifies the distributor or registrant of a commercial feed.

(3) "Commercial feed" means all materials, except unadulterated whole unmixed seeds or unadulterated physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed; provided, that the department may exempt from this definition by rule, or from specific sections of this chapter, commodities such as hay,

straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances if the commodities, compounds, or substances are not inter-mixed or mixed with other materials, and are not adulterated within the meaning of Subsection (1)(a).

(4) "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients manufactured according to the specific instructions of the final purchaser.

(5) "Distribute" means to:

(a) offer for sale, sell, exchange, or barter commercial feed; or

(b) supply, furnish, or otherwise provide commercial feed to a contract feeder.

(6) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

(7) "Feed ingredient" means each constituent material in a commercial feed.

(8) "Label" means any written, printed, or graphic matter upon or accompanying a commercial feed.

(9) "Manufacture" means to grind, mix, blend, or otherwise process a commercial feed for distribution.

(10) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(11) "Misbranded" means any commercial feed, whether in a container or in bulk, that bears a label that is false or misleading in any particular, or that bears a label that does not strictly conform to the labeling requirements of Section 4-12-5.

(12) "Official sample" means a sample of commercial feed taken by the department and designated as "official."

(13) "Percent" or "percentage" means percentage by weight.

(14) "Ton" means a net weight of two thousand pounds avoirdupois.

Amended by Chapter 179, 2007 General Session

4-12-3. Department authorized to make and enforce rules -- Cooperation with state and federal agencies authorized.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter and may cooperate with, or enter into agreements with, other agencies of this state, other states, and agencies of the United States in the administration and enforcement of this chapter.

Amended by Chapter 382, 2008 General Session

4-12-4. Distribution of commercial and customer-formula feed -- Registration or permit required -- Application -- Fees -- Expiration -- Renewal.

(1) No person may distribute a commercial feed in this state which is not registered with the department. Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee, determined by the department pursuant to Subsection 4-2-2(2), for each brand name of commercial feed registered. Upon receipt of a proper application

and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing the applicant to distribute the registered commercial feed in this state through December 31 of the year in which the registration is issued, subject to suspension or revocation for cause.

(2) A person who distributes customer-formula feed is not required to register such feed, but is required to obtain a permit from the department before distribution. Application for a customer-formula feed distribution permit shall be made to the department upon forms prescribed and furnished by it accompanied with an annual permit fee determined by the department pursuant to Subsection 4-2-2(2). Upon receipt by the department of a proper application and payment of the appropriate fee as prescribed by the department, the commissioner shall issue a permit to the applicant allowing the applicant to distribute customer-formula feed in this state through December 31 of the year in which the permit is issued, subject to suspension or revocation for cause.

(3) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee. Each renewal fee shall be paid on or before December 31 of each year.

(4) A customer-formula feed permit is renewable for a period of one year upon the payment of an annual permit renewal fee in an amount equal to the current applicable original permit fee. Each permit renewal fee shall be paid on or before December 31 of each year.

Amended by Chapter 130, 1985 General Session

4-12-5. Labeling requirements for commercial and customer-formula feed specified.

(1) Each container of commercial feed, except customer-formula feed, distributed in this state shall bear a label setting forth:

(a) the name and principal address of the registrant;

(b) the product or brand name, if any, under which it is distributed;

(c) the feed ingredients stated in the manner prescribed by rule of the department;

(d) the net cumulative weight of the container and contents;

(e) the lot number or some other means of lot identification; and

(f) any information prescribed by rule of the department considered necessary for the safe and effective use of the feed.

(2) (a) Each bulk shipment of commercial feed, except customer-formula feed, distributed in this state shall be accompanied with a printed or written statement specifying the information in Subsection (1)(a) through (f) of this section.

(b) The statement shall be delivered to the purchaser at the time the bulk feed is delivered.

(3) Each container or bulk shipment of customer-formula feed distributed in this state shall bear a label or be accompanied with an invoice setting forth:

(a) the name and principal address of the manufacturer;

(b) the name and principal address of the purchaser;

(c) the date of delivery;

(d) the net weight of each registered commercial feed used in the mixture and the net weight of each other ingredient used; and

(e) any information prescribed by rule of the department considered necessary for the safe and effective use of the customer-formula feed.

Amended by Chapter 179, 2007 General Session

4-12-6. Enforcement -- Inspection and samples authorized -- Methods for sampling and analysis prescribed -- Results to be forwarded to registrant or permittee -- Warrants.

(1) The department shall periodically sample, inspect, analyze, and test commercial feeds distributed within this state and may enter any public or private premises or vehicle for the purpose of determining compliance with this chapter. It may also in conjunction with such activities inspect records to determine compliance with this chapter.

(2) Methods for sampling and for analyses of feed ingredients, mineral ingredients, or other ingredients, or analyses of commercial feed mixtures (customer-formula feeds) shall be made in accordance with methods published by the Association of Official Analytical Chemists or other generally recognized methods.

(3) The department shall be guided by the official sample in determining whether a commercial feed is misbranded, adulterated, or otherwise deficient.

(4) The results of all tests of official samples shall be forwarded by the department to the registrant or permittee, as the case may be, to the address specified on the container, label, or on the written statement or invoice. In addition, the department shall furnish to the registrant or permittee part of any official sample which it determines is misbranded or adulterated upon written request to the department made by the registrant within 30 days after receipt of the unsatisfactory test results.

(5) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Enacted by Chapter 2, 1979 General Session

4-12-7. Suspension or revocation authorized -- Refusal to register or issue permit authorized -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Costs.

(1) The department may suspend or revoke the registration or permit, respectively, of any brand name of commercial feed or customer-formula feed, or refuse to register or issue a permit for any brand name or product of commercial feed, upon satisfactory evidence that the registrant or permittee has used fraudulent or deceptive practices in the registration of a commercial feed or in the issuance of a permit, or in its distribution in this state.

(2) The department may issue a "stop sale, use, or removal order" to the distributor or owner of any designated commercial feed or lot of commercial feed which it finds or has reason to believe is misbranded, adulterated, or is otherwise in violation

of this chapter. The order shall be in writing and no commercial feed subject to it shall be moved, offered, or exposed for sale, except upon subsequent written release by the department. Before a release is issued, the department may require the distributor or owner of the "stopped" commercial feed or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a commercial feed which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) If condemnation is ordered, the commercial feed shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the commercial feed into conformance, or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the commercial feed.

Enacted by Chapter 2, 1979 General Session

4-12-8. Unlawful acts specified.

No person in this state shall:

(1) manufacture or distribute adulterated or misbranded commercial feed;

(2) adulterate or misbrand any commercial feed;

(3) distribute agricultural products such as whole seed, hay, straw, stover, silage, cobs, husks, or bulbs which are adulterated;

(4) remove or dispose of any commercial feed in violation of a "stop sale, use, or removal order;" or

(5) distribute any commercial feed which is not registered or any customer-formula feed which is not subject to permit.

Enacted by Chapter 2, 1979 General Session

4-13-1. Short title.

This chapter shall be known and may be cited as the "Utah Fertilizer Act."

Enacted by Chapter 2, 1979 General Session

4-13-2. Definitions.

As used in this chapter:

(1) "Adulterated fertilizer" means any commercial fertilizer that contains an ingredient that renders it injurious to beneficial plant life when applied in accordance with the directions on the label, or contains crop or weed seed, or is inadequately labeled to protect plant life.

(2) "Brand" means any term, design, or trade mark used in connection with one or several grades of commercial fertilizer or soil amendment.

(3) "Commercial fertilizer" means any substance that contains one or more recognized plant nutrients that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, exclusive of unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, gypsum, and other products exempted by rule of the department.

(4) "Distributor" means any person who:

(a) imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer;

(b) imports, consigns, manufactures, produces, compounds, sizes, or blends a soil amendment; or

(c) offers for sale, sells, barters, or otherwise supplies commercial fertilizer or a soil amendment in this state.

(5) "Fertilizer material" means a commercial fertilizer that contains either:

(a) quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash);

(b) approximately 85% plant nutrients in the form of a single chemical compound; or

(c) plant or animal residues or by-products, or a natural material deposit that is processed so that its primary plant nutrients have not been materially changed, except through purification and concentration.

(6) "Grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; provided, that specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash and that fertilizer materials such as bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(7) (a) "Guaranteed analysis" means the minimum percentage by weight of plant nutrients claimed in the following order and form:

Total nitrogen (N)	____ percent
Available phosphoric acid (P0)	____ percent
Soluble potash (K0)	____ percent

(b) For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphate materials, it means the total phosphoric acid or degree of fineness.

(c) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, when required by rule.

(d) (i) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rule of the department.

(ii) The guarantees for such other nutrients shall be expressed in the form of the element.

(iii) The sources of such other nutrients, such as oxides, salt, chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label.

(iv) Other beneficial substances or compounds, determinable by laboratory

methods, also may be guaranteed by permission of the department.

(v) Any plant nutrients or other substances or compounds guaranteed are subject to inspection and analysis in accord with the methods and rules prescribed by the department.

(8) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer or soil amendment.

(9) "Label" means the display of all written, printed, or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil amendment.

(10) "Labeling" means all written, printed, or graphic matter upon or accompanying any commercial fertilizer or soil amendment, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers or soil amendments.

(11) "Mixed fertilizer" means a commercial fertilizer containing any combination of fertilizer materials.

(12) "Official sample" means any sample of commercial fertilizer or soil amendment taken by the department and designated as "official."

(13) "Percent" or "percentage" means the percentage by weight.

(14) "Registrant" means any person who registers a commercial fertilizer or a soil amendment under the provisions of this chapter.

(15) (a) "Soil amendment" means any substance that is intended to improve the physical characteristics of soil.

(b) "Soil amendment" does not include any commercial fertilizer, agriculture liming materials, unmanipulated animal manure, unmanipulated vegetable manure, pesticides, or other material exempt by rule of the department.

(16) "Specialty fertilizer" means any commercial fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(17) "Ton" means a net weight of two thousand pounds avoirdupois.

Amended by Chapter 179, 2007 General Session

4-13-3. Distribution of commercial fertilizer or soil amendment -- Registration required -- Application -- Fees -- Expiration -- Renewal -- Exemptions specified -- Blenders and mixers to register name under which business conducted -- Blenders and mixers fee.

(1) (a) Each brand and grade of commercial fertilizer or soil amendment shall be registered in the name of the person whose name appears upon the label before being distributed in this state.

(b) The application for registration shall be submitted to the department on a form prescribed and furnished by it, and shall be accompanied by a fee determined by the department pursuant to Subsection 4-2-2(2) for each brand and grade.

(c) Upon approval by the department, a copy of the registration shall be furnished to the applicant.

(d) (i) Each registration expires at midnight on December 31 of the year in which

issued.

(ii) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.

(iii) Each renewal fee shall be paid on or before December 31 of each year.

(2) The application for registration shall include the following information:

(a) the net weight;

(b) the brand and grade;

(c) the guaranteed analysis;

(d) the name and address of the registrant; and

(e) any other information as the department may prescribe by rule.

(3) A distributor is not required to register any commercial fertilizer which has been registered by another person under this chapter if the label does not differ in any respect.

(4) (a) A distributor is not required to register each grade of commercial fertilizer formulated by a consumer before mixing, but is required to:

(i) register the name under which the business of blending or mixing is conducted;

(ii) pay an annual blenders license fee determined by the department pursuant to Subsection 4-2-2(2); and

(iii) label the mixed fertilizer or soil amendment as provided in Section 4-13-4.

(b) (i) A blenders license shall expire at midnight on December 31 of the year in which it is issued.

(ii) A blenders license is renewable for a period of one year upon the payment of an annual license renewal fee in an amount equal to the current applicable original blenders license fee.

(iii) Each renewal fee shall be paid on or before December 31 of each year.

(5) (a) A fee shall be assessed on fertilizer and soil amendment products sold in the state.

(b) The fee shall be:

(i) determined by the department pursuant to Subsection 4-2-2(2); and

(ii) paid by the manufacturer or distributor on a schedule specified by rule.

(c) Revenue generated by the fee shall be deposited in the General Fund as dedicated credits to be used by the department for education about and promotion of proper fertilizer distribution, handling, and use.

Amended by Chapter 81, 1997 General Session

4-13-4. Labeling requirements for specialty fertilizer, bulk commercial fertilizer, packaged mixed fertilizer, and soil amendments specified.

(1) Each container of specialty commercial fertilizer distributed in this state shall bear a label setting forth:

(a) its net weight;

(b) brand and grade;

(c) guaranteed analysis;

(d) the name and address of the registrant; and

(e) the lot number.

(2) (a) Each bulk shipment of commercial fertilizer distributed in this state shall be accompanied by a printed or written statement setting forth the information specified in Subsections (1)(a) through (e).

(b) The statement shall be delivered to the purchaser at the time the bulk fertilizer is delivered.

(3) Each sale of packaged mixed fertilizer shall be labeled, or labeling furnished the consumer, to show its net weight, guaranteed analysis, lot number, and the name and address of the distributor.

(4) (a) Each container of soil amendment shall conform to the requirements of Subsection (1), and if distributed in bulk, with Subsection (2).

(b) The name or chemical designation and content of the soil amending ingredient or any other information prescribed by rule of the department shall appear whether distributed in a container or in bulk.

Amended by Chapter 179, 2007 General Session

4-13-5. Enforcement -- Inspection and samples authorized -- Methods for sampling and analysis prescribed -- Warrants.

(1) The department shall periodically sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed within this state to determine if they comply with this chapter.

(2) Methods of analysis and sampling shall be in accordance with those adopted by the department from sources such as the Association of Official Analytical Chemists Journal.

(3) In determining whether a commercial fertilizer or soil amendment is deficient, the department shall be guided solely by the official sample.

(4) The department is authorized to enter any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter. If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Enacted by Chapter 2, 1979 General Session

4-13-6. Distribution of fertilizers not complying with labeling requirements prohibited -- Guaranteed analysis deficient -- Penalty assessed -- Time for payment -- Court action to vacate or amend finding authorized.

(1) No person shall distribute in this state a commercial fertilizer, fertilizer material, soil amendment or specialty fertilizer if the official sample thereof establishes that the commercial fertilizer, fertilizer material, soil amendment or specialty fertilizer is deficient in the nutrients guaranteed on the label by an amount exceeding the values established by rule or if the overall index value of the official sample is below the level established by rule.

(2) If an official sample, after analysis, demonstrates the guaranteed analysis is

deficient in one or more of its primary plant foods (NPK) beyond the investigational allowance prescribed by rule, or if the over-all index value of the official sample is below the level established by rule, a penalty of three times the commercial value of the deficiency or deficiencies of the lot represented by the official sample may be assessed against the registrant.

(3) All penalties assessed under this section shall be paid to the department within three months after notice from the department.

(4) Any registrant aggrieved by the finding of an official sample deficiency may file a complaint with a court of competent jurisdiction to vacate or amend the finding of the department.

Amended by Chapter 179, 2007 General Session

4-13-7. Department to publish commercial values applied to components of commercial fertilizer.

The department shall annually publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state for the purpose of notifying registrants of the commercial value to be applied to commercial fertilizers under Section 4-13-6.

Enacted by Chapter 2, 1979 General Session

4-13-8. Suspension or revocation authorized -- Refusal to register authorized -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Costs.

(1) The department may revoke or suspend the registration of any brand of commercial fertilizer or soil amendment, or refuse to register any brand of commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in registration or distribution in this state.

(2) The department may issue a "stop sale, use or removal order" to the owner or person in possession of any designated lot of commercial fertilizer or soil amendment which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no commercial fertilizer or soil amendment subject to it shall be moved or offered or exposed for sale, except upon the subsequent written release of the department. Before a release is issued, the department may require the owner or person in possession of the "stopped" lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any fertilizer which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction, to prevent violation of this chapter. No bond shall be required of the department in any injunctive proceeding under this section.

(4) If condemnation is ordered, the fertilizer or soil amendment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the fertilizer or soil amendment an opportunity to apply to

the court for permission to relabel, reprocess, or otherwise bring the product into conformance, or to remove it from the state.

(5) If the court orders condemnation of the commercial fertilizer or soil amendment, court costs, fees, storage, and other expenses shall be awarded against the claimant of the fertilizer or soil amendment.

Enacted by Chapter 2, 1979 General Session

4-13-9. Sales or exchanges of commercial fertilizers or soil amendments between manufacturers, importers, or manipulators permitted.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer or soil amendment materials for sale or as preventing the free and unrestricted shipment of commercial fertilizer or soil amendments to manufacturers or manipulators who have registered their brands as required by this chapter.

Enacted by Chapter 2, 1979 General Session

4-14-1. Short title.

This chapter shall be known and may be cited as the "Utah Pesticide Control Act."

Enacted by Chapter 2, 1979 General Session

4-14-2. Definitions.

As used in this chapter:

(1) "Active ingredient" means an ingredient that:

(a) prevents, destroys, repels, controls, or mitigates pests; or

(b) acts as a plant regulator, defoliant, or desiccant.

(2) "Adulterated pesticide" means a pesticide with a strength or purity that is below the standard of quality expressed on the label under which it is offered for sale.

(3) "Animal" means all vertebrate or invertebrate species.

(4) "Beneficial insect" means an insect that is:

(a) an effective pollinator of plants;

(b) a parasite or predator of pests; or

(c) otherwise beneficial.

(5) "Defoliant" means a substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Desiccant" means a substance or mixture intended to artificially accelerate the drying of plant or animal tissue.

(7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state.

(8) "Environment" means all living plants and animals, water, air, land, and the interrelationships that exist between them.

(9) (a) "Equipment" means any type of ground, water, or aerial equipment or

contrivance using motorized, mechanical, or pressurized power to apply a pesticide.

(b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance used to apply a pesticide that is dependent solely upon energy expelled by the person making the pesticide application.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(12) (a) "Fungus" means a nonchlorophyll-bearing thallophyte or a nonchlorophyll-bearing plant of an order lower than mosses and liverworts, including rust, smut, mildew, mold, yeast, and bacteria.

(b) "Fungus" does not include fungus existing on or in:

(i) a living person or other animal; or

(ii) processed food, beverages, or pharmaceuticals.

(13) "Insect" means an invertebrate animal generally having a more or less obviously segmented body:

(a) usually belonging to the Class Insecta, comprising six-legged, usually winged forms, including beetles, bugs, bees, and flies; and

(b) allied classes of arthropods that are wingless usually having more than six legs, including spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.

(15) (a) "Labeling" means all labels and all other written, printed, or graphic matter:

(i) accompanying a pesticide or equipment; or

(ii) to which reference is made on the label or in literature accompanying a pesticide or equipment.

(b) "Labeling" does not include any written, printed, or graphic matter created by the EPA, the United States Departments of Agriculture or Interior, the Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means land, water, air, and plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling that is false or misleading or that does not strictly comport with the label and labeling requirements set forth in Section 4-14-4.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nemathelminthes and Class Nematoda, including unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) (a) "Pest" means:

(i) any insect, rodent, nematode, fungus, weed; or

(ii) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism that is injurious to health or to the environment or that the

department declares to be a pest.

(b) "Pest" does not include:

(i) viruses, bacteria, or other microorganisms on or in a living person or other living animal; or

(ii) protected wildlife species identified in Section 23-13-2 that are regulated by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-3.

(21) "Pesticide" means any:

(a) substance or mixture of substances including a living organism that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its application or effect; and

(d) any other substance designated by the department by rule.

(22) "Pesticide applicator" is a person who:

(a) applies or supervises the application of a pesticide; and

(b) is required by this chapter to have a license.

(23) (a) "Pesticide applicator business" means an entity that:

(i) is authorized to do business in this state; and

(ii) offers pesticide application services.

(b) "Pesticide applicator business" does not include an individual licensed agricultural applicator who may work for hire.

(24) "Pesticide dealer" means any person who distributes restricted use pesticides.

(25) (a) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants.

(b) "Plant regulator" does not include plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(26) "Restricted use pesticide" means:

(a) a pesticide, including a highly toxic pesticide that is a serious hazard to beneficial insects, animals, or land; or

(b) any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

(27) "Weed" means any plant that grows where not wanted.

(28) "Wildlife" means all living things that are neither human, domesticated, nor pests.

Amended by Chapter 370, 2007 General Session

4-14-3. Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees --

Renewal.

(1) (a) No person may distribute a pesticide in this state that is not registered with the department.

(b) Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered.

(c) Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause.

(d) (i) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.

(ii) Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label which will appear on the pesticide; and

(d) any information prescribed by rule of the department considered necessary for the safe and effective use of the pesticide.

(3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires.

(b) A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for it;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section 4-14-5.

(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license.

(8) A person shall receive a license before applying:

(a) a restricted use pesticide; or

(b) a general use pesticide for hire or in exchange for compensation.

(9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained by:

(i) submitting an application on a form provided by the department;

(ii) paying the license fee determined by the department according to Subsection 4-2-2(2); and

(iii) complying with the rules adopted as authorized by this chapter.

(b) A person may apply for a triennial license that expires on December 31 of the second calendar year after the calendar year in which the license is issued.

(c) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce:

(i) this chapter; and

(ii) any other chapter of this title for the purpose of improving rangeland health.

Amended by Chapter 383, 2011 General Session

4-14-4. Labeling requirement for pesticides specified.

(1) Each container of pesticide distributed in this state shall bear a label setting forth:

(a) the name, brand, or trademark under which it is distributed;

(b) an accurate statement of the ingredients on that part of the immediate container (and on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase; provided, that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect the health and environment;

(d) the net weight or measure of the content;

(e) the name and address of the manufacturer, registrant, or person for whom manufactured;

(f) the EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;

(g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and

(h) directions for use of the pesticide sufficient to effectuate the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

(2) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:

(a) the skull and crossbones;
(b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and
(c) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

Amended by Chapter 3, 1981 General Session

4-14-5. Issuance of experimental use permits -- Application -- Terms and conditions for issuance.

(1) The department upon application may:
(a) issue an experimental use permit to any person if it determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under Section 4-14-3; or
(b) refuse to issue an experimental permit if it determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.
(2) The department may also with respect to issuance of an experimental use permit:
(a) prescribe the terms and conditions for the conduct of the experimental use which in all events shall be under the supervision of the department; and
(b) revoke or modify any experimental use permit if it determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.
(3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

Enacted by Chapter 2, 1979 General Session

4-14-6. Department authorized to make and enforce rules.

The department may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to:
(1) declare as a pest any form of plant or animal life that is injurious to health or the environment, except:
(a) a human being; or
(b) a bacteria, virus, or other microorganism on or in a living person or animal;
(2) establish, in accordance with the regulations promulgated by the EPA under 7 U.S.C. Sec. 136w(c)(2), whether pesticides registered for special local needs under the authority of 7 U.S.C. Sec. 136v(c) are highly toxic to man;
(3) establish, consistent with EPA regulations, that certain pesticides or quantities of substances contained in these pesticides are injurious to the environment;
(4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if it determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment;

(5) establish qualifications for a pesticide applicator business; and

(6) adopt any rule, not inconsistent with federal regulations promulgated under FIFRA, considered necessary to administer and enforce this chapter, including rules relating to the sale, distribution, use, and disposition of pesticides if necessary to prevent damage and to protect the public health.

Amended by Chapter 382, 2008 General Session

4-14-7. Enforcement -- Inspection and sampling authorized -- Notice of deficiency to be given registrant -- Objects of inspection delineated -- Warrants.

(1) The department to determine compliance with this chapter, shall periodically sample, inspect, and analyze pesticides distributed within this state; observe and investigate the use and application of pesticides within this state; and inspect equipment used to apply pesticides in this state to determine if they comply with this chapter.

(2) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(3) The department, for the purpose of enforcing this section, is authorized at reasonable times, to enter any private or public premises for the purpose of:

(a) inspecting any equipment used in applying pesticides;

(b) inspecting or sampling lands actually or reported to be exposed to pesticides;

(c) inspecting storage or disposal areas;

(d) investigating complaints of injury to animals or lands;

(e) sampling pesticides wherever located including in vehicles; or

(f) observing the use and application of a pesticide.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

Enacted by Chapter 2, 1979 General Session

4-14-8. Suspension or revocation -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Award of costs authorized.

(1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in its distribution in this state.

(2) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide which it finds or has reason to believe is being offered or exposed for sale in violation of this chapter. The order shall be in writing and no pesticide subject to it shall be moved, offered, or exposed for sale, except upon the subsequent written release by the department. Before a release

is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter. No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) If condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove it from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

Enacted by Chapter 2, 1979 General Session

4-14-9. Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements specified in rule for a noncommercial, commercial, or private pesticide applicator through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

Amended by Chapter 179, 2007 General Session
Amended by Chapter 370, 2007 General Session

4-14-10. Pesticide Committee created -- Composition -- Terms -- Compensation -- Duties.

(1) There is created a Pesticide Committee comprising nine persons appointed by the governor to four-year terms of office, one member from each of the following state agencies and organizations:

(a) Utah State Agricultural Extension Service;
(b) Department of Agriculture and Food;
(c) Department of Health;
(d) Division of Wildlife Resources;
(e) Department of Environmental Quality;
(f) Utah Pest Control Association;
(g) agricultural chemical industry;
(h) Utah Farmers Union; and
(i) Utah Farm Bureau Federation.

(2) Notwithstanding the requirements of Subsection (1), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The committee shall elect one of its members to serve as chair. The chair is responsible for the call and conduct of meetings of the Pesticide Committee.

(5) Attendance of a simple majority of the members constitutes a quorum for the transaction of official business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The Pesticide Committee shall make recommendations to the commissioner regarding making rules pertaining to the sale, distribution, use, and disposal of pesticides.

Amended by Chapter 286, 2010 General Session

4-14-12. Defenses.

(1) As an affirmative defense to any action brought as a result of the alleged misuse or misapplication of a pesticide, a person may present evidence that as of the time of the alleged violation, the person was in compliance with label directions, this chapter, and any rules issued in accordance with this chapter.

(2) A person is not liable for injuries resulting from the misuse or misapplication of a pesticide unless the person was negligent.

Amended by Chapter 370, 2007 General Session

4-14-13. Registration required for a pesticide business.

(1) A pesticide applicator business shall register with the department by:

(a) submitting an application on a form provided by the department;

(b) paying the registration fee; and

(c) certifying that the business is in compliance with this chapter and departmental rules authorized by this chapter.

(2) (a) By following the procedures and requirements of Section 63J-1-504, the department shall establish a registration fee based on the number of pesticide applicators employed by the pesticide applicator business.

(b) (i) Notwithstanding Section 63J-1-504, the department shall deposit the fees as dedicated credits and may only use the fees to administer and enforce this chapter.

(ii) The Legislature may annually designate the revenue generated from the fee as nonlapsing in an appropriations act.

(3) (a) The department shall issue a pesticide applicator business a registration certificate if the pesticide applicator business:

(i) has complied with the requirements of this section; and

(ii) meets the qualifications established by rule.

(b) The department shall notify the pesticide applicator business in writing that

the registration is denied if the pesticide applicator business does not meet the registration qualifications.

(4) A registration certificate expires on December 31 of the second calendar year after the calendar year in which the registration certificate is issued.

(5) (a) The department may suspend a registration certificate if the pesticide applicator business violates this chapter or any rules authorized by it.

(b) A pesticide applicator business whose registration certificate has been suspended may apply to the department for reinstatement of the registration certificate by demonstrating compliance with this chapter and rules authorized by it.

(6) A pesticide applicator business shall:

(a) only employ a pesticide applicator who has received a license from the department, as required by Section 4-14-3; and

(b) ensure that all employees comply with this chapter and the rules authorized by it.

Amended by Chapter 391, 2010 General Session

4-15-1. Short title.

This chapter shall be known and may be cited as "The Utah Nursery Act."

Enacted by Chapter 126, 1981 General Session

4-15-2. Definitions.

As used in this chapter:

(1) "Balled and burlapped stock" means nursery stock which is removed from the growing site with a ball of soil containing its root system intact and encased in burlap or other material to hold the soil in place;

(2) "Bare-root stock" means nursery stock which is removed from the growing site with the root system free of soil;

(3) "Container stock" means nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient to allow newly developed fibrous roots to form so that if the plant is removed from the container its root-media ball will remain intact;

(4) "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight;

(5) "Minimum indices of vitality" mean standards adopted by the department to determine the health and vigor of nursery stock offered for sale in this state;

(6) "Nonestablished container stock" means deciduous nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball;

(7) "Nursery" means any place where nursery stock is propagated and grown for sale or distribution;

(8) "Nursery outlet" means any place or location where nursery stock is offered for wholesale or retail sale;

(9) "Nursery stock" means all plants, whether field grown, container grown, or

collected native plants; trees, shrubs, vines, grass sod; seedlings, perennials, biennials; and buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution; except that it does not include dormant bulbs, tubers, roots, corms, rhizomes, pips; field, vegetable, or flower seeds; or bedding plants, annual plants, florists' greenhouse or field-grown plants, flowers or cuttings;

(10) "Place of business" means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed;

(11) "Packaged stock" means bare-root stock which is packed either in bundles or in single plants with the roots in some type of moisture-retaining material designed to retard evaporation and hold the moisture-retaining material in place.

Amended by Chapter 378, 2010 General Session

4-15-3. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-15-4. Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.

It is unlawful for any person in this state to offer nursery stock for sale at a nursery or nursery outlet, or to solicit or receive orders for nursery stock for a person who regularly engages in the business of operating a nursery or nursery outlet, without a license issued by the department.

Enacted by Chapter 126, 1981 General Session

4-15-5. License -- Application -- Fees -- Expiration -- Renewal.

(1) (a) Application for a license to operate a nursery or nursery outlet or to solicit or receive orders of nursery stock for a person regularly engaged in the business of operating a nursery or nursery outlet shall be made to the department on forms prescribed and furnished by it.

(b) Upon receipt of a proper application and compliance with applicable rules, and payment of a license fee determined by the department according to Subsection 4-2-2(2) for each place of business where the applicant intends to offer nursery stock for wholesale or retail sale, or the payment of a fee determined by the department pursuant to Subsection 4-2-2(2) in the case of an agent, the commissioner, if satisfied the convenience and necessity of the industry and the public will be served, shall issue a license to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(2) A license to operate a nursery or nursery outlet or an agent's license is renewable on or before December 31 of each year for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection 4-2-2(2).

Amended by Chapter 179, 2007 General Session

4-15-6. Nursery stock for wholesale or retail sale -- Graded and sized -- Labels and tags -- Information to appear on label or tag.

(1) Each type of nursery stock delivered to a nursery or nursery outlet for subsequent wholesale or retail sale shall:

(a) be sized and graded in accordance with the applicable rules of the department; and

(b) bear a tag or label with the name, grade, size, and variety of the stock.

(2) Each bundle, single lot, or single nursery stock sold at retail shall bear a secure tag or label with the common or botanical name, grade, size, and variety of the stock legibly printed or written on it.

Amended by Chapter 179, 2007 General Session

4-15-7. Inspection -- Issuance of certificate -- Destruction of infested or diseased stock.

(1) Each nursery shall be inspected by the department at least once each year. If upon inspection it appears that the nursery and its stock are free of insect pests and plant disease the department shall issue a certificate to that effect to the nursery.

(2) Each nursery outlet shall be inspected by the department at least once each year during the period nursery stock is offered for retail sale. An inspection certificate may be issued by the department to a nursery outlet to permit the interstate shipment of nursery stock if the stock contemplated for shipment appears free of insect pests and plant disease.

(3) Nursery stock found to be infested with insect pests or infected with plant disease shall be destroyed or otherwise treated as determined by the department.

Enacted by Chapter 126, 1981 General Session

4-15-8. Transport of out-of-state nursery stock to Utah -- Certificate of inspection to be filed with department by out-of-state nurseries -- Option in department to accept exchange list in lieu of certificate of inspection -- Imported stock to be tagged -- Treatment of stock not tagged.

(1) Out-of-state nurseries and nursery outlets transporting nursery stock to a nursery or nursery outlet in this state shall annually deliver to the department a certified duplicate copy of the "state of origin" certificate of inspection for each such out-of-state nursery or nursery outlet; provided, that the department may accept and exchange a list of certified or licensed out-of-state nurseries or nursery outlets in lieu of a certificate of inspection for each such individual nursery or nursery outlet.

(2) Nursery stock originating outside and imported into this state for customer delivery or for resale shall bear a tag stating that the nursery stock has been inspected and certified free from plant pests and disease. The tag shall also bear the name and address of the shipper or consignor. A shipment of nursery stock destined for delivery in this state which is not accompanied with such a tag may be returned to the owner or

consignor at such person's expense, or may be destroyed, or otherwise disposed of by the department without compensation to the owner or consignor.

Enacted by Chapter 126, 1981 General Session

4-15-9. Nursery stock offered or advertised for sale -- Unlawful to misrepresent name, origin, grade, variety, quality or vitality -- Information required in advertisements.

No person shall misrepresent the name, origin, grade, variety, quality, or indice of vitality of any nursery stock advertised or offered for sale at a nursery or nursery outlet. All advertisements of nursery stock shall clearly state the name, size, and grade of the stock where applicable.

Enacted by Chapter 126, 1981 General Session

4-15-10. Infested or diseased stock not to be offered for sale -- Identification of "nonestablished container stock" -- Requirements for container stock -- Inspected and certified stock only to be offered for sale -- Prohibition against coating aerial plant surfaces.

(1) Nursery stock which is infested with plant pests, including noxious weeds, or infected with disease or which does not meet minimum indices of vitality may not be offered for sale.

(2) All nonestablished container stock offered for sale shall be identified by the words "nonestablished container stock" legibly printed on a water resistant tag which states the length of time it has been planted or the date it was planted and may not be offered for sale in any manner which leads a purchaser to believe it is container stock.

(3) All container stock offered for sale shall be established with a root-media mass that will retain its shape and hold together when removed from the container.

(4) No nursery stock other than officially inspected and certified stock shall be offered for wholesale or retail sale in this state.

(5) Colored waxes or other materials which coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

Amended by Chapter 378, 2010 General Session

4-15-11. Enforcement -- Inspection -- Stop sale order -- Procedure -- Warrants.

(1) The department may issue a "stop sale" order to any nursery or nursery outlet which it finds, or has reason to believe, is offering, advertising, or selling nursery stock in violation of Section 4-15-10. The "stop sale" order shall be in writing and no nursery stock subject to it shall be advertised or sold, except upon subsequent written release by the department.

(2) The department is authorized for the purpose of ascertaining compliance with this chapter to enter and inspect any nursery or nursery outlet where nursery stock is kept during their business hours. If access for the purpose of inspection is denied, the department may proceed immediately to the nearest court of competent jurisdiction and

obtain an ex parte warrant or its equivalent to permit inspection of the nursery or nursery outlet.

Enacted by Chapter 126, 1981 General Session

4-15-12. Suspension or revocation -- Grounds -- Notice and hearing.

The department may suspend or revoke the license of any nursery, nursery outlet, or agent that violates Section 4-15-9 or 4-15-10; provided, that no suspension or revocation shall be effective until after the nursery, nursery outlet, or agent is afforded notice and a hearing.

Enacted by Chapter 126, 1981 General Session

4-16-1. Short title.

This chapter shall be known and may be cited as the "Utah Seed Act."

Enacted by Chapter 126, 1981 General Session

4-16-2. Definitions.

As used in this chapter:

(1) "Advertisement" means any representation made relative to seeds, plants, bulbs, or ground stock other than those on the label of a seed container, disseminated in any manner.

(2) "Agricultural seeds" mean seeds of grass, forage plants, cereal crops, fiber crops, sugar beets, seed potatoes, or any other kinds of seed or mixtures of seed commonly known within this state as agricultural or field seeds.

(3) "Flower seeds" mean seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental plants commonly known and sold under the name of flower seeds in this state.

(4) "Foundation seed," "registered seed," or "certified seed" means seed that is produced and labeled in accordance with procedures officially recognized by a seed certifying agency approved and accredited in this state.

(5) (a) "Hybrid" means the first generation seed of a cross produced by controlling pollination and by combining:

(i) two or more inbred lines;

(ii) one inbred or a single cross with an open-pollinated variety; or

(iii) two varieties or species, except open-pollinated varieties of corn, Zea mays.

(b) The second generation and subsequent generations from the crosses referred to in Subsection (5)(a) are not to be regarded as hybrids.

(c) Hybrid designations shall be treated as variety names.

(6) "Kind" means one or more related species or subspecies of seed which singly or collectively is known by one name, for example, corn, oats, alfalfa, and timothy.

(7) (a) "Label" means any written, printed, or graphic representation accompanying and pertaining to any seeds, plants, bulbs, or ground stock whether in bulk or in containers.

(b) "Label" includes representations on invoices, bills, and letterheads.

(8) "Lot" means a definite quantity of seed identified by a number or other mark, every part or bag of which is uniform within recognized tolerances.

(9) "Noxious-weed seeds" mean weed seeds declared noxious by the commissioner.

(10) "Pure seed," "germination," or other terms in common use for testing seeds for purposes of labeling shall have ascribed to them the meaning set forth for such terms in the most recent edition of "Rules for Seed Testing" published by the Association of Official Seed Analysts.

(11) "Seeds for sprouting" means seeds sold for sprouting for salad or culinary purposes.

(12) "Sowing" means the placement of agricultural seeds, vegetable seeds, flower seeds, tree and shrub seeds, or seeds for sprouting in a selected environment for the purpose of obtaining plant growth.

(13) "Treated" means seed that has received an application of a substance to reduce, control, or repel certain disease organisms, fungi, insects or other pests which may attack the seed or its seedlings, or has received some other treatment to improve its planting value.

(14) "Tree and shrub seeds" mean seeds of woody plants commonly known and sold under the name of tree and shrub seeds in this state.

(15) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic, which differentiate it from other plants of the same kind.

(16) "Vegetable seeds" mean seeds of crops grown in gardens or on truck farms that are generally known and sold under the name of vegetable seeds, plants, bulbs, and ground stocks in this state.

(17) "Weed seeds" mean seeds of any plant generally recognized as a weed within this state.

Amended by Chapter 324, 2010 General Session

4-16-3. Department authorized to make and enforce rules -- Cooperation with state and federal agencies authorized.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are deemed necessary to administer and enforce this chapter; and, in conjunction with its administration and enforcement, it is authorized to cooperate with other state agencies, other states, and with the United States Department of Agriculture or other departments or agencies of the federal government.

Amended by Chapter 382, 2008 General Session

4-16-4. Labeling requirements specified for containers of agricultural seed, mixtures of lawn and turf seed, vegetable seed, flower seed, tree and shrub seed, and seeds for sprouting.

(1) Each container of agricultural seed offered or exposed for sale or

transported for sowing into this state shall be labeled with the following information:

(a) the common name of the kind or kind and variety of each seed component in excess of 5% by weight of the whole and the percent by weight of each component in the order of its predominance, provided that:

(i) if any component is required by rule of the department to be labeled as a variety, the label, in addition to stating the common name of the seed, shall specify the name of the variety or, if allowed by rule of the department, state "Variety Not Stated";

(ii) if any component is a hybrid seed, that fact shall be stated on the label; and

(iii) if more than one component is required to be named, the word "mixture" shall appear;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the percentage by weight of all weed seeds;

(e) the percentage by weight of agricultural or crop seeds other than those named on the label;

(f) the percentage by weight of inert matter;

(g) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted;

(h) the origin, if known, of alfalfa, red clover, or field corn and, if the origin is unknown, that fact shall be stated; and

(i) the month and year seed tests were conducted specifying:

(i) percent of germination, exclusive of hard seed;

(ii) percent of hard seed; and

(iii) total percent of germination and hard seed.

(2) Each container of seed mixtures for lawn or turf seed offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the kind or kind and variety of each agricultural seed component in excess of 5% by weight of the whole, and the percentage by weight of pure seed in order of its predominance in columnar form;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the percentage by weight of all weed seeds;

(e) the percentage by weight of agricultural seeds or crop seeds other than those required to be named on the label;

(f) the percentage by weight of inert matter;

(g) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted;

(h) the month and year seed tests were conducted specifying:

(i) percent of germination, exclusive of hard seed; and

(ii) percent of hard seed;

(i) the word "mixed" or "mixture"; and

(j) its net weight.

(3) Each container of vegetable seeds weighing one pound or less offered or

exposed for sale or prepared for home gardens or household plantings or preplanted in containers, mats, tapes, or other devices shall be labeled with the following information:

(a) the common name of the kind and variety of seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the calendar month and year the seed was tested or the year for which the seed was packaged;

(d) if germination of the seed is less than the germination standard last established for the seed by the department, the label shall specify:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present;

(iii) the calendar month and year the germination test was completed to determine the percentages; and

(iv) the words "Below Standard" in not less than eight-point type; and

(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of the seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(4) Each container of vegetable seeds weighing more than one pound offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of each kind and variety of seed component present in excess of 5% by weight of the whole and the percentage by weight of each in order of its predominance;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the month and year seed tests were conducted specifying:

(i) the percentage of germination, exclusive of hard seed; and

(ii) the percentage of hard seed, if present; and

(e) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted.

(5) Each container of flower seeds prepared in packets for use in home flower gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices and offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seeds or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the calendar month and year the seed was tested or the year for which the seed was packaged;

(d) if germination of the seed is less than the germination standard last established by the department, the label shall specify:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the words "Below Standard" in not less than eight-point type; and

(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(6) Each container of flower seeds in other than packets prepared for use in home flower gardens or household plantings and other than in preplanted containers, mats, tapes, and other devices offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seed or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the month and year the seed was tested, or the year for which it was packaged; and

(e) for those kinds of seeds for which standard testing procedures are prescribed:

(i) the percentage of germination, exclusive of hard seed; and

(ii) the percentage of hard seed, if present.

(7) Each container of tree and shrub seeds offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the species of seed and subspecies, if appropriate;

(b) the scientific name of the genus and species and subspecies, if appropriate;

(c) the name and address of the person who labeled the seed or who offers or exposes it for sale in this state;

(d) the lot number or other lot identification;

(e) information as to origin as follows:

(i) for seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county; and

(ii) for seed collected from other than a predominantly indigenous stand, identity of the area of collection and the origin of the stand or state "origin not indigenous";

(f) the elevation or the upper and lower limits of elevation within which said seed was collected;

(g) purity as a percentage of pure seed by weight;

(h) for those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the calendar month and year the test was completed to determine such percentages; and

(i) for those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected.

(8) Each container of seeds for sprouting offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the name and address of the person who labeled the seed, or who offers or

exposes it for sale in this state;

(b) the commonly accepted name of the kind or kinds in order of predominance;

(c) lot number;

(d) percentage by weight of each pure seed component in excess of 5% of the whole, other crop seeds, inert matter, and weed seeds, if any;

(e) percentage of germination of each pure seed component; and

(f) the calendar month and year the seed was tested or the year for which the seed was packaged.

(9) Any written or printed matter of any label shall appear in English.

Amended by Chapter 237, 1999 General Session

4-16-5. Distribution of seeds -- Germination tests required -- Date to appear on label -- Seed to be free of noxious weed seed -- Special requirements for treated seeds -- Prohibitions.

(1) No person in this state shall offer or expose any agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting for sale or sowing unless:

(a) (i) for agricultural seeds, including mixtures of agricultural seeds:

(A) a test to determine the percentage of germination has been performed within 18 months, exclusive of the month the seed is tested and the date the seed is offered for sale; and

(B) the date of the test appears on the label;

(ii) for vegetable, flower, or tree and shrub seed or seeds for sprouting:

(A) a test to determine the percentage of germination has been performed within nine months, exclusive of the month the seed is tested and the date the seed is offered for sale; and

(B) the date of the test appears on the label;

(iii) for hermetically sealed agricultural, vegetable, flower, or tree and shrub seed:

(A) a test to determine the percentage of germination has been performed within 36 months, exclusive of the month the seed is tested and the date the seed is offered for sale; provided, that hermetically sealed seeds may be offered or exposed for sale after 36 months if they have been retested for germination within nine months, exclusive of the month the seed is retested and the date the seeds are offered or exposed for sale; and

(B) the date of the test appears on the label;

(b) its package or other container is truthfully labeled and in accordance with Section 4-16-4; and

(c) it is free of noxious weed seed, subject to any tolerance as may be prescribed by the department through rule.

(2) The label on any package or other container of an agricultural, vegetable, flower, or tree and shrub seed which has been treated and for which a claim is made on account of the treatment, in addition to the labeling requirements specified in Section 4-16-4, shall:

(a) state that the seeds have been treated;

(b) state the commonly accepted name, generic chemical name, or abbreviated

chemical name of the substance used for treatment;

(c) if the seed is treated with an inoculant, state the date beyond which the inoculant is not considered effective; and

(d) include a caution statement consistent with rules of the department if the treatment substance remains with the seed in an amount which is harmful to vertebrate animals; provided, that the caution statement for mercurials and similarly toxic substances, as defined by rule of the department, shall state the seed has been treated with poison with "POISON" printed in red letters on a background of distinctly contrasting color together with a representation of the skull and crossbones.

(3) A person may not:

(a) use the word "trace" as a substitute for a statement required under this chapter;

(b) disseminate any false or misleading advertisement about agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting; or

(c) detach, alter, or destroy any label or substitute any seed in a manner which defeats the purpose of this chapter.

Amended by Chapter 81, 1997 General Session

4-16-6. Chapter does not apply to seed not intended for sowing, to seed at seed processing plant, or to seed transported or delivered for transportation in the ordinary course of business.

This chapter does not apply to:

(1) seed or grain not intended for sowing;

(2) seed at, or consigned to, a seed processing or cleaning plant; provided, that any label or any other representation which is made with respect to the uncleaned or unprocessed seed is subject to this chapter; or

(3) to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, the carrier is not engaged in producing, processing, or marketing agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting.

Amended by Chapter 81, 1997 General Session

4-16-7. Inspection -- Samples -- Analysis -- Seed testing facilities to be maintained -- Rules to control offensive seeds -- Notice of offending seeds -- Warrants.

(1) (a) The department shall periodically enter public or private premises from which seeds are distributed, offered, or exposed for sale to sample, inspect, analyze, and test agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting distributed within this state to determine compliance with this chapter.

(b) To perform the duties specified in Subsection (1)(a), the department shall:

(i) establish and maintain facilities for testing the purity and germination of seeds;

(ii) prescribe by rule uniform methods for sampling and testing seeds; and

(iii) establish fees for rendering service.

(2) The department shall prescribe by rule weed seeds and noxious weed seeds and fix the tolerances permitted for those offensive seeds.

(3) If a seed sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to any person who is distributing, offering, or exposing the seeds for sale. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Amended by Chapter 324, 2010 General Session

4-16-8. Enforcement -- Stop sale, use, or removal authorized -- Court action -- Procedures -- Costs.

(1) (a) The department may issue a "stop sale, use, or removal order" to the distributor, owner, or person in possession of any designated agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting or lot of seed which it finds or has reason to believe violates this chapter.

(b) The order shall be in writing and no seed subject to it shall be moved, offered, or exposed for sale, except upon subsequent written release by the department.

(c) Before a release is issued, the department may require the distributor or owner of the "stopped" seed or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(2) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any seed which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter. No bond may be required of the department in an injunctive proceeding brought under this section.

(3) (a) If condemnation is ordered, the seed shall be disposed of as the court directs.

(b) The court may not order condemnation without giving the claimant of the seed an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the seed into conformance, or for permission to remove it from the state.

(c) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the seed.

Amended by Chapter 81, 1997 General Session

4-16-9. Designation of official testing agency for certification of seed.

The agricultural experiment station at Utah State University is designated as the official state agency responsible for the production, approval, and testing of foundation seeds in this state. This agency shall perform all functions necessary for seed

certification including the determination of the adaptability of established and new crop varieties for planting in this state, whether produced in this state or elsewhere and the determination of eligibility of crop varieties for registration and certification in the state. In performing its responsibility, the experiment station may contract, subject to available funds, upon such terms and conditions as it deems appropriate with a private seed certifying agency.

Enacted by Chapter 126, 1981 General Session

4-16-10. False or misleading advertising with respect to seed quality prohibited.

Unless agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting sold, advertised, or exposed or offered for sale in this state for propagation or planting have been registered or certified by an officially recognized seed certifying agency approved and accredited in this state, a person may not:

(1) use orally or in writing:

(a) the term "foundation," "registered," or "certified" seed along with other words; or

(b) any other term or form of words which suggests that the seed has been certified or registered by an inspection agency duly authorized by any state, or that there has been registration or certification, or either; or

(2) use any tags similar to registration or certification tags.

Amended by Chapter 81, 1997 General Session

4-16-11. Distributors of seed to keep record of each lot of seed distributed.

(1) Each person whose name appears on the label of agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting shall keep a complete record of each lot of agricultural, vegetable, flower, tree and shrub seed or seeds for sprouting distributed in this state for a period of two years and a file sample of each lot of seed for a period of one year after final disposition of the lot.

(2) The records and samples pertaining to the distribution of the seeds shall be available to the department for inspection during regular business hours.

Amended by Chapter 81, 1997 General Session

4-17-1. Short title.

This chapter shall be known and may be cited as the "Utah Noxious Weed Act."

Enacted by Chapter 126, 1981 General Session

4-17-2. Definitions.

As used in this chapter:

(1) "Commission" means the county legislative body of the counties of this state.

(2) "Commissioner" means the commissioner of agriculture and food or the

commissioner's representative.

(3) "County noxious weed" means any plant which is not on the state noxious weed list, is especially troublesome in a particular county, and is declared by the county legislative body to be a noxious weed within its county.

(4) "Noxious weed" means any plant the commissioner determines to be especially injurious to public health, crops, livestock, land, or other property.

Amended by Chapter 82, 1997 General Session

4-17-3. Commissioner -- Functions, powers, and duties.

The commissioner has the following powers and duties:

(1) investigates and designates noxious weeds on a statewide basis;

(2) compiles and publishes annually a list of statewide noxious weeds;

(3) coordinates and assists in inter-county noxious weed enforcement activities;

(4) determines whether each county complies with this chapter;

(5) assists a county which fails to carry out the provisions of this chapter in its implementation of a weed control program;

(6) prescribes the form and general substantive content of notices to the public and to individuals concerning the prevention and control of noxious weeds;

(7) compiles and publishes a list of articles capable of disseminating noxious weeds or seeds and designate treatment to prevent dissemination; and

(8) regulates the flow of contaminated articles into the state and between counties to prevent the dissemination of noxious weeds or seeds.

Amended by Chapter 18, 1985 General Session

4-17-3.5. Creation of State Weed Committee -- Membership -- Powers and duties -- Expenses.

(1) There is created a State Weed Committee composed of eight members, with each member representing one of the following:

(a) the Department of Agriculture and Food;

(b) the Department of Natural Resources;

(c) the Utah State University Agricultural Experiment Station;

(d) the Utah State University Extension Service;

(e) the Utah Association of Counties;

(f) private agricultural industry;

(g) the Utah Weed Control Association; and

(h) the Utah Weed Supervisors Association.

(2) The commissioner shall select the members of the committee from those nominated by each of the respective groups or agencies following approval by the Agricultural Advisory Board.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the commissioner shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure

that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(4) (a) Members may be removed by the commissioner for cause.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The State Weed Committee shall:

(a) confer and advise on matters pertaining to the planning, implementation, and administration of the state noxious weed program;

(b) recommend names for membership on the committee; and

(c) serve as members of the executive committee of the Utah Weed Control Association.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 461, 2013 General Session

4-17-4. County Weed Control Board -- Appointment -- Composition -- Terms -- Removal -- Compensation.

(1) Each county executive of the counties may, with the advice and consent of the county legislative body, appoint a county weed control board comprised of not less than three nor more than five appointed members.

(2) (a) If the county legislative body is the county commission, the chair of the county legislative body shall appoint one member of the county legislative body who shall act as a coordinator between the county and the weed board.

(b) If the county legislative body is a county council, the county executive shall serve on the county weed control board and act as coordinator between the county and the weed board.

(3) Two members of the board shall be farmers or ranchers whose primary source of income is derived from production agriculture.

(4) Members are appointed to four year terms of office and serve with or without compensation as determined by each county legislative body.

(5) Members may be removed for cause and any vacancy which occurs on a county weed control board shall be filled by appointment for the unexpired term of the vacated member.

Amended by Chapter 227, 1993 General Session

4-17-4.5. Commissioner may require county weed control board to justify failure to enforce provisions.

If the commissioner determines that the weed control board of any county has failed to perform its duties under this chapter, the commissioner may require the board to justify, in writing, its failure to enforce these provisions within its county.

Enacted by Chapter 18, 1985 General Session

4-17-5. County weed control board responsible for control of noxious weeds -- Cooperation with other county boards -- Authority to designate noxious weed -- Public hearing before removal of noxious weed from state list.

(1) A county weed control board is responsible, under the general direction of the county executive, for the formulation and implementation of a county-wide coordinated noxious weed control program designed to prevent and control noxious weeds within its county.

(2) A county weed control board is required, under the general direction of its commission, to cooperate with other county weed control boards to prevent and control the spread of noxious weeds.

(3) A county legislative body may declare a particular weed or competitive plant, not appearing on the state noxious weed list, a county noxious weed within its county, or the county executive, with the approval of the county legislative body, may petition the commissioner for removal of a particular noxious weed from the state noxious weed list. The county legislative body may not approve a petition of the county executive to the commissioner to remove a noxious weed unless it has first conducted a public hearing after due notice.

Amended by Chapter 227, 1993 General Session

4-17-6. Weed control supervisor -- Qualification -- Appointment -- Duties.

(1) (a) Each commission may employ one or more weed control supervisors qualified to:

(i) detect and treat noxious weeds; and

(ii) direct the weed control program for the county weed board.

(b) A person may be a weed control supervisor for more than one county weed board.

(c) Terms and conditions of employment shall be prescribed by the commission.

(2) A supervisor, under the direction of the local county weed control board, shall:

(a) examine all land under the jurisdiction of the county weed control board to determine whether this chapter and the rules adopted by the department have been met;

(b) compile data on infested areas;

(c) consult and advise upon matters pertaining to the best and most practical method of noxious weed control and prevention;

(d) render assistance and direction for the most effective control and prevention;

(e) investigate violations of this chapter;

(f) enforce noxious weed controls within the county; and

(g) perform any other duties required by the county weed control board.

Amended by Chapter 179, 2007 General Session

4-17-7. Notice of noxious weeds to be published annually in county -- Notice to particular property owners to control noxious weeds -- Methods of prevention or control specified -- Failure to control noxious weeds considered public nuisance.

(1) Each county weed control board before May 1 of each year shall post a general notice of the noxious weeds within the county in at least three public places within the county and publish the same notice on:

(a) at least three occasions in a newspaper or other publication of general circulation within the county; and

(b) as required in Section 45-1-101.

(2) If the county weed control board determines that particular property within the county requires prompt and definite attention to prevent or control noxious weeds, it shall serve the owner or the person in possession of the property, personally or by certified mail, a notice specifying when and what action is required to be taken on the property. Methods of prevention or control may include definite systems of tillage, cropping, use of chemicals, and use of livestock.

(3) An owner or person in possession of property who fails to take action to control or prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.

Amended by Chapter 378, 2010 General Session

4-17-8. Noxious weeds -- Failure to control after notice a nuisance -- Notice and hearing -- Control at county expense -- Owner liable for county costs -- Charges lien against property.

(1) If the owner or person in possession of the property fails to take action to control or prevent the spread of noxious weeds within five working days after the property is declared a public nuisance, the county may, after reasonable notification, enter the property, without the consent of the owner or the person in possession, and perform any work necessary, consistent with sound weed prevention and control practices, to control the weeds.

(2) Any expense incurred by the county in controlling the noxious weeds is paid by the property owner of record or the person in possession of the property, as the case may be, within 90 days after receipt of the charges incurred by the county. If not paid within 90 days after notice of the charges, the charges become a lien against the property and are collectible by the county treasurer at the time general property taxes are collected.

Amended by Chapter 18, 1985 General Session

4-17-8.5. Hearing before county weed control board -- Appeal of decision to the county legislative body -- Judicial review.

(1) Any person served with notice to control noxious weeds may request a hearing to appeal the terms of the notice before the county weed control board within 10 days of receipt of such notice and may appeal the decision of the county weed control board to the county legislative body.

(2) Any person served with notice to control noxious weeds who has had a hearing before both the county weed control board and the county legislative body may further appeal the decision of the county legislative body by filing written notice of appeal with a court of competent jurisdiction.

Amended by Chapter 227, 1993 General Session

4-17-10. Jurisdiction of state and local agencies to control weeds.

The departments or agencies of state and local governments shall develop, implement, and pursue an effective program for the control and containment of noxious weeds on all lands under their control or jurisdiction, including highways, roadways, rights-of-way, easements, game management areas, and state parks and recreation areas.

Enacted by Chapter 18, 1985 General Session

4-17-11. County noxious weed control fund authorized.

Authority is hereby granted commissions to establish and maintain a noxious weed control fund in each county for use in the administration of this chapter.

Enacted by Chapter 126, 1981 General Session

4-18-6.5. Grants to improve manure management or control runoff at animal feeding operations.

(1) (a) The commission may make grants to owners or operators of animal feeding operations to pay for costs of plans or projects to improve manure management or control surface water runoff, including costs of preparing or implementing comprehensive nutrient management plans.

(b) The commission shall make the grants described in Subsection (1)(a) from funds appropriated by the Legislature for that purpose.

(2) (a) In awarding grants, the commission shall consider the following criteria:

(i) the ability of the grantee to pay for costs of plans or projects to improve manure management or control surface water runoff;

(ii) the availability of:

(A) matching funds provided by the grantee or another source; or

(B) material, labor, or other items of value provided in lieu of money by the grantee or another source; and

(iii) the benefits that accrue to the general public by the awarding of a grant.

(b) The commission may establish by rule additional criteria for the awarding of grants.

(3) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Amended by Chapter 382, 2008 General Session

4-18-101. Title.

This chapter is known as the "Conservation Commission Act."

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-102. Purpose declaration.

(1) The Legislature finds and declares that the soil and water resources of this state constitute one of its basic assets and that the preservation of these resources requires planning and programs to ensure the development and utilization of these resources and to protect them from the adverse effects of wind and water erosion, sediment, and sediment related pollutants.

(2) The Legislature finds that local production of food is essential for:

(a) the security of the state's food supply; and

(b) the self-sufficiency of the state's citizens.

(3) The Legislature finds that sustainable agriculture is critical to:

(a) the success of rural communities;

(b) the historical culture of the state;

(c) maintaining healthy farmland;

(d) maintaining high water quality;

(e) maintaining abundant wildlife; and

(f) high-quality recreation for citizens of the state.

(4) The Legislature finds that livestock grazing on public lands is important for the proper management, maintenance, and health of public lands in the state.

(5) The Legislature encourages each agricultural producer in the state to operate in a reasonable and responsible manner to maintain the integrity of land, soil, water, and air.

(6) To encourage each agricultural producer in this state to operate in a reasonable and responsible manner to maintain the integrity of the state's resources, the state shall administer the Utah Environmental Stewardship Certification Program, created in Section 4-18-107.

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-103. Definitions.

As used in this chapter:

(1) (a) "Agricultural discharge" means the release of agriculture water from the property of a farm, ranch, or feedlot that:

(i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, or other water conveyance system;

(ii) pollutes ground water; or

(iii) constitutes a significant nuisance to urban land.

(b) "Agricultural discharge" does not include:

(i) runoff from a farm, ranch, or feedlot, or the return flow of water from an irrigated field onto land that is not part of a body of water; or

(ii) a release of water from a farm, ranch, or feedlot into a normally dry water conveyance leading to an active body of water, if the release does not reach the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agricultural operation" means a farm, ranch, or animal feeding operation.

(3) "Agriculture water" means:

(a) water used by a farm, ranch, or feedlot for the production of food, fiber, or fuel;

(b) the return flow of water from irrigated agriculture; or

(c) agricultural storm water runoff.

(4) "Alternate" means a substitute for a district supervisor if the district supervisor cannot attend a meeting.

(5) (a) "Animal feeding operation" means a facility where animals, other than aquatic animals, are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

(b) "Animal feeding operation" does not include an operation where animals are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time the animals are present.

(6) "Best management practices" means practices, including management policies and the use of technology, used by each sector of agriculture in the production of food and fiber that are commonly accepted practices, or that are at least as effective as commonly accepted practices, and that:

(a) protect the environment;

(b) protect human health;

(c) ensure the humane treatment of animals; and

(d) promote the financial viability of agricultural production.

(7) "Certified agricultural operation" means an agricultural operation that is certified under the Utah Environmental Stewardship Certification Program in accordance with Section 4-18-107.

(8) "Certified conservation planner" means a planner of a state conservation district, or other qualified planner, that is approved by the commission to certify an agricultural operation under the Utah Environmental Stewardship Certification Program, created in Section 4-18-107.

(9) "Commission" means the Conservation Commission created in Section 4-18-104.

(10) "Comprehensive nutrient management plan" or "nutrient management plan" means a plan to properly store, handle, and spread manure and other agricultural byproducts to:

(a) protect the environment; and

(b) provide nutrients for the production of crops.

(11) "District" or "conservation district" has the same meaning as "conservation district" as defined in Section 17D-3-102.

(12) "Pollution" means a harmful human-made or human-induced alteration to the water of the state, including an alteration to the chemical, physical, biological, or radiological integrity of water that harms the water of the state.

(13) "State technical standards" means a collection of best management practices that will protect the environment in a reasonable and economical manner for each sector of agriculture as required by this chapter.

(14) "Sustainable agriculture" means agriculture production and practices that promote:

(a) the environmental responsibility of owners and operators of farms, ranches, and feedlots; and

(b) the profitability of owners and operators of farms, ranches, and feedlots.

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-104. Conservation Commission created -- Composition -- Appointment -- Terms -- Compensation -- Attorney general to provide legal assistance.

(1) There is created within the department the Conservation Commission to perform the functions specified in this chapter.

(2) The Conservation Commission shall be comprised of 16 members, including:

(a) the director of the Extension Service at Utah State University or the director's designee;

(b) the president of the Utah Association of Conservation Districts or the president's designee;

(c) the commissioner or the commissioner's designee;

(d) the executive director of the Department of Natural Resources or the executive director's designee;

(e) the executive director of the Department of Environmental Quality or the executive director's designee;

(f) the chair and the vice chair of the State Grazing Advisory Board, created in Section 4-20-1.5;

(g) the president of the County Weed Supervisors Association;

(h) seven district supervisors who provide district representation on the commission on a multicounty basis; and

(i) the director of the School and Institutional Trust Lands Administration or the director's designee.

(3) If a district supervisor is unable to attend a meeting, an alternate may serve in the place of the district supervisor for that meeting.

(4) The members of the commission specified in Subsection (2)(h) shall:

(a) be recommended by the commission to the governor; and

(b) be appointed by the governor with the consent of the Senate.

(5) (a) Except as required by Subsection (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) The commissioner is chair of the commission.

(8) Attendance of a majority of the commission members at a meeting constitutes a quorum.

(9) A member may not receive compensation or benefits for the member's

service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) The commission shall keep a record of its actions.

(11) The attorney general shall provide legal services to the commission upon request.

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-105. Conservation commission -- Functions and duties.

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to:

(i) protect, conserve, utilize, and develop the soil, air, and water resources of the state; and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, from the Agriculture Resource Development Fund, for:

(i) rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects; and

(iv) programs designed to promote energy efficient farming practices;

(f) administer federal or state funds, including loan funds under this chapter, in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) the conservation of soil or water resources;

(ii) maintenance of rangeland improvement projects; and

(iii) the control or eradication of noxious weeds and invasive plant species:

(A) in cooperation and coordination with local weed boards; and

(B) in accordance with Section 4-2-8.7;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities, and coordinate flood control projects in the state;

(i) assist other state agencies with conservation standards for agriculture when requested; and

(j) when assigned by the governor, when required by contract with the

Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:

(i) develop programs for the prevention, control, or abatement of new or existing pollution to the soil, water, or air of the state;

(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;

(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;

(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;

(v) meet the requirements of federal law related to water and air pollution in the exercise of its powers and duties; and

(vi) establish administrative penalties relating to agricultural discharges as defined in Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) take necessary action to promote and enforce the purpose and findings of Section 4-18-102;

(d) sue and be sued; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund money.

(1) There is created a revolving loan fund known as the Agriculture Resource Development Fund.

(2) The Agriculture Resource Development Fund shall consist of:

(a) money appropriated to it by the Legislature;

(b) sales and use tax receipts transferred to the fund in accordance with Section 59-12-103;

(c) money received for the repayment of loans made from the fund;

(d) money made available to the state for agriculture resource development from any source; and

(e) interest earned on the fund.

(3) The commission shall make loans from the Agriculture Resource Development Fund as provided by Section 4-18-105.

Renumbered and Amended by Chapter 227, 2013 General Session

4-18-107. Utah Environmental Stewardship Certification Program.

(1) There is created the Utah Environmental Stewardship Certification Program.

(2) The commission, with the assistance of the department and with the advice of the Water Quality Board, created in Section 19-1-106, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

(a) (i) best management practices;

(ii) state technical standards; and

(iii) guidelines for nutrient management plans;

(b) requirements for qualification under the Utah Environmental Stewardship Certification Program that:

(i) are consistent with sustainable agriculture;

(ii) help prevent harm to the environment, including prevention of an agricultural discharge; and

(iii) encourage agricultural operations in the state to follow:

(A) best management practices; and

(B) nutrient management plans that meet the state technical standards appropriate for each type of agricultural operation;

(c) the procedure for qualification under the Utah Environmental Stewardship Certification Program;

(d) the requirements and certification process for an individual to become a certified conservation planner; and

(e) standards and procedures for administering the Utah Environmental Stewardship Certification Program, including:

(i) renewal of a certification under Subsection (4)(b);

(ii) investigation and revocation of a certification under Subsection (6); and

(iii) revocation of a certification under Subsection (7)(b).

(3) An owner or operator of an agricultural operation may apply to certify the agricultural operation under the Utah Environmental Stewardship Certification Program in accordance with this section.

(4) (a) Except as provided in Subsection (6) or (7), a certified agricultural operation remains certified for a period of five years after the day on which the agricultural operation becomes certified.

(b) A certified agricultural operation may, in accordance with commission rule, renew the certification for an additional five years to keep the certification for a total period of 10 years after the day on which the agricultural operation becomes certified.

(5) Subject to review by the commissioner or the commissioner's designee, a certified conservation planner shall certify each qualifying agricultural operation that applies to the Utah Environmental Stewardship Certification Program.

(6) (a) Upon request of the Department of Environmental Quality or upon receipt by the department of a citizen environmental complaint, the department shall, with the assistance of certified conservation planners as necessary, investigate a certified agricultural operation to determine whether the agricultural operation has committed a significant violation of the requirements of the Utah Environmental Stewardship Certification Program.

(b) If, after completing an investigation described in Subsection (6)(a), the department determines that a certified agricultural operation has committed a significant

violation of the requirements for the Utah Environmental Stewardship Certification Program, the department shall report the violation to the commission.

(c) Upon receipt of a report described in Subsection (6)(b), the commission shall review the report and:

(i) revoke the agricultural operation's certification; or

(ii) set terms and conditions for the agricultural operation to maintain its certification.

(7) (a) If, for a certification renewal under Subsection (4)(b), or an investigation under Subsection (6)(a), the department requests access to a certified agricultural operation, the certified agricultural operation shall, at a reasonable time, allow access for the department to:

(i) inspect the agricultural operation; or

(ii) review the records of the agricultural operation.

(b) If a certified agricultural operation denies the department access as described in Subsection (7)(a), the commission may revoke the agricultural operation's certification.

(8) If the commission changes a requirement of the Utah Environmental Stewardship Certification Program after an agricultural operation is certified in accordance with former requirements, during the certification and renewal periods described in Subsections (4)(a) and (b) the agricultural operation may choose whether to abide by a new requirement, but the agricultural operation is not subject to the new requirement until the agricultural operation reapplies for certification.

(9) Nothing in this section exempts an agricultural discharge made by a certified agricultural operation from the provisions of Subsection 19-5-105.5(3)(b).

Enacted by Chapter 227, 2013 General Session

4-19-1. Department responsible for conduct and administration of rural rehabilitation program.

The department shall conduct and administer the rural rehabilitation program within the state in accordance with the agreement entered into in January 1975, between the United States of America through its Farm Home Administration and the state through its commissioner.

Amended by Chapter 179, 2007 General Session

4-19-2. Department authorized to approve and make grants and loans, acquire property, or lease or operate property.

The department, in conjunction with the administration of the rural rehabilitation program, may:

(1) approve and make a loan to a farm or agricultural cooperative association regulated under Title 3, Uniform Agricultural Cooperative Association Act, subject to Section 4-19-3, including:

(a) taking security for the loan through a mortgage, trust deed, pledge, or other security device;

(b) purchasing a promissory note, real estate contract, mortgage, trust deed, or

other instrument or evidence of indebtedness; and

(c) collecting, compromising, canceling, or adjusting a claim or obligation arising out of the administration of the rural rehabilitation program;

(2) purchase or otherwise obtain property in which the department has acquired an interest on account of a mortgage, trust deed, lien, pledge, assignment, judgment, or other means at any execution or foreclosure sale;

(3) operate or lease, if necessary to protect its investment, property in which it has an interest or sell or otherwise dispose of the property; and

(4) approve and make an education loan or an education grant to an individual for the purpose of attending a vocational school, college, or university to obtain additional education, qualifications, or skills.

Amended by Chapter 324, 2010 General Session

4-19-3. Loans -- Not to exceed period of 10 years -- Agricultural Advisory Board to approve loans and renewals, methods of payments, and interest rates -- Guidelines in fixing interest rates declared.

(1) The department may not make a loan authorized under this chapter for a period to exceed 10 years but the loan is renewable.

(2) The Agricultural Advisory Board shall approve:

(a) all loans and renewals;

(b) the methods of repayment; and

(c) the interest rates charged.

(3) In fixing interest rates, the Agricultural Advisory Board shall consider:

(a) the current applicable interest rate or rates being charged by the USDA Farm Service Agency on similar loans;

(b) the current prime rate charged by leading lending institutions; and

(c) any other pertinent economic data.

(4) The interest rates established shall be compatible with guidelines stated in this section.

Amended by Chapter 179, 2007 General Session

4-19-4. Utah Rural Rehabilitation Fund.

(1) The department shall deposit all income generated from the administration of the rural rehabilitation program in a separate fund known as the "Utah Rural Rehabilitation Fund."

(2) The state treasurer shall maintain the Utah Rural Rehabilitation Fund and record all debits and credits made to the fund by the department.

Amended by Chapter 179, 2007 General Session

4-20-1. Title -- Definitions.

(1) This chapter is known as the "Rangeland Improvement Act."

(2) As used in this chapter:

(a) "Cooperative weed management association" means a multigovernmental

association cooperating together to control noxious weeds in a geographic area that includes some portion of Utah.

(b) "Fees" mean the revenue collected by the United States Secretary of Interior from assessments on livestock using public lands.

(c) "Grazing district" means an administrative unit of land:

(i) designated by the commissioner as being valuable for grazing and for raising forage crops; and

(ii) which consists of any combination of the following:

(A) public land;

(B) private land;

(C) state land; and

(D) school and institutional trust land as defined in Section 53C-1-103.

(d) "Public lands" mean vacant, unappropriated, reserved, and unreserved federal lands.

(e) "Regional board" means a regional grazing advisory board whose members are appointed under Section 4-20-1.6.

(f) "Restricted account" means the Rangeland Improvement Account created in Section 4-20-2.

(g) "Sales" or "leases" mean the sale or lease, respectively, of isolated or disconnected tracts of public lands by the United States Secretary of Interior.

(h) "State board" means the State Grazing Advisory Board created under Section 4-20-1.5.

Amended by Chapter 278, 2010 General Session

4-20-1.5. State Grazing Advisory Board -- Duties.

(1) (a) There is created within the department the State Grazing Advisory Board.

(b) The commissioner shall appoint the following members:

(i) one member from each regional board;

(ii) one member from the Conservation Commission, created in Section 4-18-104;

(iii) one representative of the Department of Natural Resources;

(iv) two livestock producers at-large; and

(v) one representative of the oil, gas, or mining industry.

(2) The term of office for a state board member is four years.

(3) Members of the state board shall elect a chair, who shall serve for two years.

(4) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The state board shall:

(a) receive:

(i) advice and recommendations from a regional board concerning:

(A) management plans for public lands, state lands, and school and institutional

trust lands as defined in Section 53C-1-103, within the regional board's region; and

(B) any issue that impacts grazing on private lands, public lands, state lands, or school and institutional trust lands as defined in Section 53C-1-103, in its region; and

(ii) requests for restricted account money from the entities described in Subsections (5)(c)(i) through (iv);

(b) recommend state policy positions and cooperative agency participation in federal and state land management plans to the department and to the Public Lands Policy Coordinating Office, created under Section 63J-4-602; and

(c) advise the department on the requests and recommendations of:

(i) regional boards;

(ii) county weed control boards, created in Section 4-17-4;

(iii) cooperative weed management associations; and

(iv) conservation districts created under the authority of Title 17D, Chapter 3, Conservation District Act.

Amended by Chapter 227, 2013 General Session

4-20-1.6. Regional Grazing Advisory Boards -- Duties.

(1) The commissioner shall appoint members to a regional board for each grazing district from nominations submitted by:

(a) the Utah Cattlemen's Association;

(b) the Utah Woolgrower's Association;

(c) the Utah Farm Bureau Federation; and

(d) a conservation district, if the conservation district's boundaries include some portion of the grazing district.

(2) Regional boards:

(a) shall provide advice and recommendations to the state board; and

(b) may receive money from the Rangeland Improvement Account created in Section 4-20-2.

(3) If a regional board receives money as authorized by Subsection (2)(b), the regional board shall elect a treasurer to expend the money:

(a) as directed by the regional board; and

(b) in accordance with Section 4-20-3.

Amended by Chapter 336, 2011 General Session

4-20-2. Rangeland Improvement Account -- Administered by department.

(1) (a) There is created a restricted account within the General Fund known as the "Rangeland Improvement Account."

(b) The restricted account shall consist of:

(i) money received by the state from the United States Secretary of Interior under the Taylor Grazing Act, 43 U.S.C. Section 315 et seq., for sales, leases, and fees;

(ii) grants or appropriations from the state or federal government; and

(iii) grants from private foundations.

(c) Interest earned on the restricted account shall be deposited into the General

Fund.

(2) The department shall:

(a) administer the restricted account;

(b) obtain from the United States Department of Interior the receipts collected from:

(i) fees in each grazing district; and

(ii) the receipts collected from the sale or lease of public lands; and

(c) distribute restricted account money in accordance with Section 4-20-3.

Amended by Chapter 303, 2011 General Session

4-20-3. Rangeland Improvement Account distribution.

(1) The department shall distribute restricted account money as provided in this section.

(a) The department shall:

(i) distribute pro rata to each school district the money received by the state under Subsection 4-20-2(1)(b)(i) from the sale or lease of public lands based upon the amount of revenue generated from the sale or lease of public lands within the district; and

(ii) ensure that all money generated from the sale or lease of public lands within a school district is credited and deposited to the general school fund of that school district.

(b) (i) After the commissioner approves a request from a regional board, the department shall distribute pro rata to each regional board money received by the state under Subsection 4-20-2(1)(b)(i) from fees based upon the amount of revenue generated from the imposition of fees within that grazing district.

(ii) The regional board shall expend money received in accordance with Subsection (2).

(c) (i) The department shall distribute or expend money received by the state under Subsections 4-20-2(1)(b)(ii) through (iv) for the purposes outlined in Subsection (2).

(ii) The department may require entities seeking funding from sources outlined in Subsections 4-20-2(1)(b)(ii) through (iv) to provide matching funds.

(2) The department shall ensure that restricted account distributions or expenditures under Subsections (1)(b) and (c) are used for:

(a) range improvement and maintenance;

(b) the control of predatory and depredating animals;

(c) the control, management, or extermination of invading species, range damaging organisms, and poisonous or noxious weeds;

(d) the purchase or lease of lands or a conservation easement for the benefit of a grazing district;

(e) watershed protection, development, distribution, and improvement;

(f) the general welfare of livestock grazing within a grazing district; and

(g) subject to Subsection (3), costs to monitor rangeland improvement projects.

(3) Annual account distributions or expenditures for the monitoring costs described in Subsection (2)(g) may not exceed 10% of the annual receipts of the fund.

Amended by Chapter 331, 2012 General Session

4-20-8. Audit of grazing districts -- State auditor to coordinate with Department of Interior in conduct of audit.

The state auditor is authorized to coordinate with the Department of Interior in auditing the books of the several advisory boards.

Enacted by Chapter 2, 1979 General Session

4-20-9. Commissioner to supervise distribution of undistributed funds if United States alters or discontinues funding leaving funds or resources available.

If the United States alters or discontinues funding under the Taylor Grazing Act or the operation of advisory boards, leaving funds or other resources undistributed or otherwise without means for continuation, the commissioner shall supervise and control the distribution of such undistributed funds or other resources.

Enacted by Chapter 2, 1979 General Session

4-20-10. Promotion of multiple use of rangeland resources.

(1) The department shall work cooperatively to promote efficient multiple-use management of the rangeland resources of the public lands administered by the federal Bureau of Land Management within the state to benefit the overall public interest.

(2) The department may serve as an independent resource for mediating disputes concerning permit issues within the scope of Subsection (1).

Enacted by Chapter 383, 2011 General Session

4-21-1. Purpose declaration.

The Legislature recognizes that production of beef is important to the economy of the state, and that its promotion is both necessary and desirable. The purpose of this chapter is to further the production and promotion of beef.

Enacted by Chapter 2, 1979 General Session

4-21-2. Definitions.

As used in this chapter:

(1) "Marketing agency" means any transaction in which the seller is represented by a person who acts as an agent of the seller in the sale of cattle in that such person issues payment to the seller and is entitled to a commission based upon the sale;

(2) "Producer" means any person who raises or feeds cattle;

(3) "Purchaser" means any person who buys cattle;

(4) "Seller" means any person who offers cattle for sale.

Enacted by Chapter 2, 1979 General Session

4-21-3. Beef promotion fee -- Deposit of revenue -- Fee set by referendum.

(1) (a) The department shall collect a fee established as required by Subsection (2) on all fee brand inspected cattle upon change of ownership or slaughter in an amount not more than $1 or less than 25 cents.

(b) The fee is collected by the local brand inspector at the time of inspection of cattle, or deducted and collected by the marketing agency or the purchaser.

(c) All revenue collected under this section shall be paid to the department, which shall deposit the revenue in an agency fund that is hereby created and is known as the "Beef Promotion Fund."

(2) Before a fee assessed under Subsection (1) becomes effective, the department shall give notice of the proposed fee to all known beef and dairy cattle producers in the state, invite all beef and dairy cattle producers to register to vote in a referendum, conduct a hearing on the proposed fee change, and conduct a referendum where at least 50% of the registered producers cast a vote with a majority of those voting casting an affirmative vote on the proposed fee level.

(3) Any fee currently assessed by the department continues in effect until modified by the department under Subsections (1) and (2).

(4) The fee assessed under this section is in addition to the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

Amended by Chapter 383, 2011 General Session

4-21-4. Refund of fees allowed -- Claim for refund to be filed with department -- Payment of refunds.

A person who objects to payment of the assessed fee may file a claim with the department within 60 days after the fee is collected. No claim for refund, however, is allowed if it is filed more than 60 days after the date the fee is collected. Each claim for refund shall be certified by the department to the state treasurer for payment from the beef promotion account, subject to any applicable provisions of the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

Amended by Chapter 10, 1986 Special Session 2

4-21-5. Revenue from fees to be used to promote beef industry -- Payment of revenue monthly to Utah Beef Council -- Deduction of costs of administration and processing funds -- Annual audit of books, records, and accounts -- Financial statement of audit published.

(1) (a) All revenue derived from the collection of fees authorized by this chapter shall be used to promote the beef industry of the state and the revenue shall be paid to:

(i) the Utah Beef Council, a Utah nonprofit corporation organized to promote Utah beef; or

(ii) an agency, acceptable to the department, with the concurrence of the Utah Cattlemen's Association.

(b) The revenue shall be paid monthly, as requested by the council or appointed agency, and the actual costs of administration for processing the funds shall be

deducted before disbursing the funds.

(2) (a) The books, records, and accounts of the Utah Beef Council or appointed agency shall be audited at least once annually by a licensed accountant.

(b) The results of the audit shall be submitted to the commissioner, and a financial statement of the audit and a general statement of operations and promotional and advertising activities shall be published by the council or appointed agency in a major livestock publication having general circulation in Utah.

Amended by Chapter 128, 2004 General Session

4-22-1. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Dairy Commission.

(2) "Dealer" means any person who buys and processes raw milk or milk fat, or who acts as agent in the sale or purchase of raw milk or milk fat, or who acts as a broker or factor with respect to raw milk or milk fat or any product derived from either.

(3) "Producer" means a person who produces milk or milk fat from cows and who sells it for human or animal consumption, or for medicinal or industrial uses.

(4) "Producer-handler" means any producer who processes raw milk or milk fat.

Enacted by Chapter 2, 1979 General Session

4-22-2. Utah Dairy Commission created -- Composition -- Elected members -- Terms of elected members -- Qualifications for election.

(1) There is created an independent state agency known as the Utah Dairy Commission.

(2) The Utah Dairy Commission consists of 13 members as follows:

(a) the commissioner of agriculture and food, or the commissioner's representative;

(b) the dean of the College of Agriculture at Utah State University, or the dean's representative;

(c) the president of the Utah Dairy Women's Association or the president of the Utah Dairy Women's Association's representative;

(d) a member from District 1, northern Cache County, which member shall have a Cornish, Lewiston, Richmond/Cove, or Trenton mailing address;

(e) a member from District 2, central Cache County and Rich County, which member shall have a Newton, Clarkston, Amalga, Smithfield, Benson, Hyde Park, Mendon, or Petersboro mailing address;

(f) a member from District 3, southern Cache County, which member shall have a Logan, Providence, Nibley, Hyrum, Paradise, Wellsville, College Ward, Young Ward, or Millville mailing address;

(g) a member from District 4, Box Elder County;

(h) a member from District 5, Weber and Morgan Counties;

(i) a member from District 6, Salt Lake, Davis, Utah, and Tooele Counties;

(j) a member from District 7, Wasatch, Summit, Duchesne, Uintah, and Daggett Counties;

(k) a member from District 8, Millard, Beaver, Iron, and Washington Counties;

(l) a member from District 9, Sanpete, Carbon, Emery, Grand, Juab, and San Juan Counties; and

(m) a member from District 10, Piute, Wayne, Kane, Garfield, and Sevier Counties.

(3) The ex officio members listed in Subsections (2)(a) and (b) shall serve without a vote.

(4) The members listed in Subsections (2)(d) through (m) shall be elected to four-year terms of office as provided in Section 4-22-6.

(5) Members shall enter office on July 1 of the year in which they are elected.

(6) The commission, by two-thirds vote, may alter the boundaries comprising the districts established in this section to maintain equitable representation of active milk producers on the commission.

(7) Each member shall be:

(a) a citizen of the United States;

(b) 26 years of age or older;

(c) an active milk producer with five consecutive years experience in milk production within this state immediately preceding election; and

(d) a resident of Utah and the district represented.

Amended by Chapter 301, 1999 General Session

4-22-3. Commission -- Organization -- Quorum to transact business -- Vacancies -- Ineligibility to serve -- Compensation.

(1) The members of the commission shall elect a chair, vice chair, and secretary from among their number.

(2) Attendance of a simple majority of the commission members at a called meeting shall constitute a quorum for the transaction of official business.

(3) The commission shall meet:

(a) at the time and place designated by the chair; and

(b) no less often than once every three months.

(4) Vacancies which occur on the commission for any reason shall be filled for the unexpired term of the vacated member by appointment of a majority of the remaining members.

(5) If a member moves from the district that he represents or ceases to act as a producer during his term of office, he shall resign from the commission within 30 days after moving from the district or ceasing production.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-22-4. Commission powers, duties, and functions.

The commission has and shall exercise the following functions, powers, and duties:

(1) to employ and fix the salary of a full-time administrator, not a member of the commission, to administer the policies adopted, and perform the duties assigned, by the commission;

(2) to conduct a campaign of research, nutritional education, and publicity, showing the value of milk, cream, and dairy products;

(3) to encourage local, national, and international use of Utah dairy products and by-products, through advertising or otherwise;

(4) to investigate and participate in studies of problems peculiar to producers in Utah and to take all actions consistent with this chapter to promote, protect, and stabilize the state dairy industry;

(5) to sue and be sued, prosecute actions in the name of the state for the collection of the assessment imposed by Section 4-22-7, enter into contracts, and incur indebtedness in furtherance of its business activities;

(6) to cooperate with any local, state, or national organization engaged in activities similar to those of the commission;

(7) to accept grants, donations, or gifts for use consistent with this chapter; and

(8) to do all other things necessary for the efficient and effective management and operation of its business.

Amended by Chapter 4, 1981 General Session

4-22-4.5. Exemption from certain operational requirements.

The commission is exempt from:

(1) Title 51, Chapter 5, Funds Consolidation Act;

(2) Title 51, Chapter 7, State Money Management Act;

(3) Title 63A, Utah Administrative Services Code;

(4) Title 63J, Chapter 1, Budgetary Procedures Act; and

(5) Title 67, Chapter 19, Utah State Personnel Management Act.

Amended by Chapter 382, 2008 General Session

4-22-5. Commission may require surety bond -- Payment of premium.

The commission may require the administrator, or any of its employees, to post a surety bond conditioned for the faithful performance of their official duties. The amount, form, and kind of such a bond shall be fixed by the commission and each bond premium shall be paid by the commission.

Enacted by Chapter 2, 1979 General Session

4-22-6. Commission to conduct elections -- Nomination of candidates -- Expenses of election paid by commission.

(1) (a) The commissioner shall administer all commission elections.

(b) The commissioner shall mail a ballot to each producer within the district in

which an election is to be held by May 15 of each election year.

(c) The candidate who receives the highest number of votes cast in the candidate's district shall be elected.

(d) The commissioner shall determine all questions of eligibility.

(e) A ballot shall be postmarked by May 31 of an election year.

(f) (i) All ballots received by the commissioner shall be counted and tallied by June 15.

(ii) A member of the commission whose name appears on a ballot may not participate in counting or tallying the ballots.

(2) Candidates for election to the commission shall be nominated, not later than April 15, by a petition signed by five or more producers who are residents of the district in which the election is to be held.

(3) The names of all nominees shall be submitted to the commissioner on or before May 1 of each year in which an election is held.

(4) All election expenses incurred by the commissioner shall be paid by the commission.

Amended by Chapter 73, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-22-7. Assessment imposed on sale of milk or cream produced, sold, or contracted for sale in state -- Time of assessment -- Collection by dealer or producer-handler -- Penalty for delinquent payment or collection -- Statement to be given to producer.

(1) An assessment of 10 cents is imposed upon each 100 pounds of milk or cream produced and sold, or contracted for sale, through commercial channels in this state.

(2) The assessment shall be:

(a) based upon daily or monthly settlements; and

(b) due at a time set by the commission, which may not be later than the last day of the month next succeeding the month of sale.

(3) (a) The assessment shall be:

(i) assessed against the producer at the time the milk or milk fat is delivered for sale;

(ii) deducted from the sales price; and

(iii) collected by the dealer or producer-handler.

(b) The proceeds of the assessment shall be paid directly to the commission who shall issue a receipt to the dealer or producer-handler.

(c) If a dealer or producer-handler fails to remit the proceeds of the assessment or deduct the assessment on time, a penalty equal to 10% of the amount due shall be added to the assessment.

(4) (a) At the time of payment of the assessment, the dealer or producer-handler shall deliver a statement to the producer calculating the assessment.

(b) The commission may require other relevant information to be included in the statement.

(5) If the mandatory assessment required by the Dairy and Tobacco Adjustment

Act of 1983, Pub. L. No. 98-180, 97 Stat. 1128 (1150.152), is abolished, a producer who objects to payment of the assessment imposed under this section, may, by January 31, submit a written request to the commission for a refund of the amount of the assessment the producer paid during the previous year.

Amended by Chapter 173, 2005 General Session

4-22-8. Revenue from assessment used to promote dairy industry -- Deposit of funds -- Annual audit of books, records, and accounts -- Annual financial report to producers.

(1) The revenue derived from the assessment imposed by Section 4-22-7 shall be used exclusively for the:

(a) administration of this chapter; and

(b) promotion of the state's dairy industry.

(2) (a) A voucher, receipt, or other written record for each withdrawal from the Utah Dairy Commission Fund shall be kept by the commission.

(b) No funds shall be withdrawn from the fund except upon order of the commission.

(3) The commission may deposit the proceeds of the assessment in one or more accounts in one or more banks approved by the state as depositories.

(4) The books, records, and accounts of the commission's activities are public records.

(5) (a) The accounts of the commission shall be audited once annually by a licensed accountant selected by the commission and approved by the state auditor.

(b) The results of the audit shall be submitted to the:

(i) commissioner;

(ii) commission; and

(iii) Division of Finance.

(c) It is the responsibility of the commission to send annually a financial report to each producer.

Amended by Chapter 128, 2004 General Session

4-22-8.5. Additional assessment for government liaison and industry relations programs -- Exemption from the assessment.

(1) In addition to the assessment provided in Section 4-22-7, an assessment of three-fourths of one cent is imposed upon each 100 pounds of milk or cream produced and sold, or contracted for sale, through commercial channels in this state for the purposes specified in Subsection (3).

(2) The three-fourths of one cent assessment shall be paid in the same manner as the assessment required by Section 4-22-7.

(3) The commission shall use the revenue derived from the three-fourths of one cent assessment imposed by this section to contract out for services and expenses of government liaison and industry relations programs created to stabilize and protect the state's dairy industry and the health and welfare of the public.

(4) A producer who objects to payment of the assessment imposed by this

section may, by January 31, submit a written request to the commission to be exempted from payment of the assessment for that year. By January 1 each year, the commission shall send a postage-paid, self-addressed postcard to each person subject to the assessment which may be returned to request an exemption.

Amended by Chapter 301, 1999 General Session

4-22-9. State disclaimer of liability.

The state is not liable for the acts or omissions of the commission, its officers, agents, or employees.

Enacted by Chapter 2, 1979 General Session

4-22-9.5. Commission not eligible for coverage under Risk Management Fund.

The commission is not eligible to receive coverage under the Risk Management Fund created under Section 63A-4-201.

Amended by Chapter 20, 1995 General Session

4-22-10. Enforcement -- Inspection of books and records of dealer or producer-handler.

The commission at reasonable times may enter upon the premises and inspect the records of any dealer or producer-handler for the purpose of enforcing this chapter.

Enacted by Chapter 2, 1979 General Session

4-23-1. Short title.

This chapter shall be known and may be cited as the "Agricultural and Wildlife Damage Prevention Act."

Enacted by Chapter 2, 1979 General Session

4-23-2. Purpose declaration.

The Legislature finds and declares that it is important to the economy of the state to maintain agricultural production at its highest possible level and at the same time, to promote, to protect, and preserve the wildlife resources of the state.

Enacted by Chapter 2, 1979 General Session

4-23-3. Definitions.

As used in this chapter:

(1) "Agricultural crops" means any product of cultivation;

(2) "Board" means the Agricultural and Wildlife Damage Prevention Board;

(3) "Bounty" means the monetary compensation paid persons for the harvest of predatory or depredating animals;

(4) "Damage" means any injury or loss to livestock, poultry, agricultural crops, or wildlife inflicted by predatory or depredating animals or depredating birds;

(5) "Depredating animal" means a field mouse, gopher, ground squirrel, jack rabbit, raccoon, or prairie dog;

(6) "Depredating bird" means a Brewer's blackbird or starling;

(7) "Livestock" means cattle, horses, mules, sheep, goats, and swine;

(8) "Predatory animal" means any coyote; and

(9) "Wildlife" means any form of animal life generally living in a state of nature, except a predatory animal or a depredating animal or bird.

Amended by Chapter 109, 1989 General Session

4-23-4. Agricultural and Wildlife Damage Prevention Board created -- Composition -- Appointment -- Terms -- Vacancies -- Compensation.

(1) There is created an Agricultural and Wildlife Damage Prevention Board composed of the commissioner and the director of the Division of Wildlife Resources, who shall serve, respectively, as the board's chair and vice chair, together with seven other members appointed by the governor to four-year terms of office as follows:

(a) one sheep producer representing wool growers of the state;

(b) one cattle producer representing range cattle producers of the state;

(c) one person from the United States Department of Agriculture;

(d) one agricultural landowner representing agricultural landowners of the state;

(e) one person representing wildlife interests in the state;

(f) one person from the United States Forest Service; and

(g) one person from the United States Bureau of Land Management.

(2) Appointees' term of office shall commence June 1.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) Attendance of five members at a duly called meeting shall constitute a quorum for the transaction of official business. The board shall convene at the times and places prescribed by the chair or vice chair.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

Amended by Chapter 324, 2010 General Session

4-23-5. Board responsibilities -- Damage prevention policy -- Rules -- Methods to control predators and depredating birds and animals.

(1) The board is responsible for the formulation of the agricultural and wildlife damage prevention policy of the state and in conjunction with its responsibility may, consistent with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to implement its policy which shall be administered by the department.

(2) In its policy deliberations the board shall:

(a) specify programs designed to prevent damage to livestock, poultry, and agricultural crops; and

(b) specify methods for the prevention of damage and for the selective control of predators and depredating birds and animals including hunting, trapping, chemical toxicants, and the use of aircraft.

(3) The board may also:

(a) specify bounties on designated predatory animals and recommend procedures for the payment of bounty claims, recommend bounty districts, recommend persons not authorized to receive bounty, and recommend to the department other actions it considers advisable for the enforcement of its policies; and

(b) cooperate with federal, state, and local governments, educational institutions, and private persons or organizations, through agreement or otherwise, to effectuate its policies.

Amended by Chapter 378, 2010 General Session

4-23-6. Department to issue licenses and permits -- Department to issue aircraft use permits -- Reports.

The department is responsible for the issuance of permits and licenses for the purposes of the federal Fish and Wildlife Act of 1956. No state agency or private person shall use any aircraft for the prevention of damage without first obtaining a use permit from the department. A state agency which contemplates the use of aircraft for the protection of agricultural crops, livestock, poultry, or wildlife shall file an application with the department for an aircraft use permit to enable the agency to issue licenses to personnel within the agency charged with the responsibility to protect such resources. Persons who desire to use privately owned aircraft for the protection of land, water, crops, wildlife, or livestock may not engage in any such protective activity without first obtaining an aircraft permit from the department. Agencies and private persons which obtain aircraft use permits shall file such reports with the department as it deems necessary in the administration of its licensing authority.

Amended by Chapter 378, 2010 General Session

4-23-7. Annual fees on sheep, goats, cattle, and turkeys -- Determination by board -- Collection methods.

(1) To assist the department in meeting the annual expense of administering this chapter, the following annual predator control fees are imposed upon animals

owned by persons whose interests this chapter is designed to protect:

Sheep and goats (except on farm dairy goats or feeder lambs)..... at least $.70 but not more than $1 per head

Cattle (except on farm dairy cattle)..... at least $.15 but not more than $.50 per head

Turkeys (breeding stock only)..... at least $.05 but not more than $.10 per head

(2) The amount of the fees imposed upon each category of animals specified in this section shall be determined by the board annually on or before January 1 of each year.

(3) (a) Fee brand inspected cattle are subject to a predator control fee upon change of ownership or slaughter.

(b) The fee shall be collected by the local brand inspector at the time of the inspection of cattle, or withheld and paid by the market from proceeds derived from the sale of the cattle.

(c) Cattle that are fee brand inspected prior to confinement to a feedlot are not subject to any subsequent predator control fee.

(4) (a) Fleece of sheared sheep is subject to a predator control fee upon sale of the fleece.

(b) (i) The fee shall be withheld and paid by the marketing agency or purchaser of wool from proceeds derived from the sale of the fleece.

(ii) The department shall enter into cooperative agreements with in-state and out-of-state wool warehouses and wool processing facilities for the collection of predator control fees on the fleece of sheep that graze on private or public range in the state.

(c) The fee shall be based on the number of pounds of wool divided by 10 pounds for white face sheep and five pounds for black face sheep.

(5) Predator control fees on turkey breeding stock shall be paid by the turkey cooperative.

(6) (a) Livestock owners shall pay a predator control fee on any livestock that uses public or private range in the state which is not otherwise subject to the fee under Subsection (3) or (4).

(b) By January 1, the commissioner shall mail to each owner of livestock specified in Subsection (6)(a) a reporting form requiring sufficient information on the type and number of livestock grazed in the state and indicating the fee imposed for each category of livestock.

(c) Each owner shall file the completed form and the appropriate fee with the commissioner before April 1.

(d) If any person who receives the reporting form fails to return the completed form and the imposed fee as required, the commissioner is authorized to commence suit through the office of the attorney general, in a court of competent jurisdiction, to collect the imposed fee, the amount of which shall be as determined by the commissioner.

(7) All fees collected under this section shall be remitted to the department and deposited in the Agricultural and Wildlife Damage Prevention Account.

Amended by Chapter 73, 2010 General Session

4-23-7.5. Agricultural and Wildlife Damage Prevention Account.

(1) There is created in the General Fund a restricted account known as the Agricultural and Wildlife Damage Prevention Account.

(2) Money received under Section 4-23-7 shall be deposited by the commissioner of agriculture and food in the Agricultural and Wildlife Damage Prevention Account to be appropriated for the purposes provided in this chapter.

(3) Any supplemental contributions received by the department from livestock owners for predator control programs shall be deposited into the Agricultural and Wildlife Damage Prevention Account.

Amended by Chapter 17, 2009 General Session

4-23-8. Proceeds of sheep fee -- Refund of sheep fees -- Annual audit of books, records, and accounts.

(1) (a) Subject to the other provisions of this Subsection (1), the commissioner may spend an amount each year from the proceeds collected from the fee imposed on sheep for the promotion, advancement, and protection of the sheep interests of the state.

(b) The amount described in Subsection (1)(a) shall be the equivalent to an amount that:

(i) equals or exceeds 18 cents per head; and

(ii) equals or is less than 25 cents per head.

(c) The commissioner shall set the amount described in Subsection (1)(a):

(i) on or before January 1 of each year; and

(ii) in consultation with one or more statewide organizations that represent persons who grow wool.

(d) All costs to promote or advance sheep interests shall be deducted from the total revenue collected before calculating the annual budget request, which shall be made by the Division of Wildlife Resources as specified in Section 4-23-9.

(e) A sheep fee is refundable in an amount equal to that part of the fee used to promote, advance, or protect sheep interests.

(f) A refund claim shall be filed with the department on or before January 1 of the year immediately succeeding the year for which the fee was paid.

(g) A refund claim shall be certified by the department to the state treasurer for payment from the Agricultural and Wildlife Damage Prevention Account created in Section 4-23-7.5.

(2) Any expense incurred by the department in administering refunds shall be paid from funds allocated for the promotion, advancement, and protection of the sheep interests of the state.

(3) (a) The books, records, and accounts of the Utah Woolgrowers Association, or any other organization which receives funds from the agricultural and wildlife damage prevention account, for the purpose of promoting, advancing, or protecting the sheep interests of the state, shall be audited at least once annually by a licensed accountant.

(b) The results of this audit shall be submitted to the commissioner.

Amended by Chapter 73, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-23-9. Annual budget requests -- Relation to amount of fees and supplemental contributions deposited in Agricultural and Wildlife Damage Prevention Account -- Commissioner to certify amount deposited.

(1) (a) The department in its annual budget request shall include a request for funds from the General Fund equal in amount to 120% of the amount of the fees and supplemental contributions deposited in the Agricultural and Wildlife and Damage Prevention Account during the previous fiscal year.

(b) The funds shall be used for the purposes provided in this chapter.

(2) (a) The Division of Wildlife Resources in its annual budget request shall include a request for funds from the General Fund equal to 25% of the amount of the fees and supplemental contributions deposited in the Agricultural and Wildlife Damage Prevention Account during the previous fiscal year.

(b) The funds shall be used for the purposes provided in this chapter.

(c) The commissioner shall certify annually to the director of the Division of Wildlife Resources before September 1, the amount of revenue deposited to the Agricultural and Wildlife Damage Prevention Account during the previous fiscal year.

Amended by Chapter 98, 1994 General Session

4-23-10. Applicability of chapter.

This chapter, unless contrary to a federal statute, shall apply to all federal, state, and private lands.

Enacted by Chapter 2, 1979 General Session

4-23-11. Holding a raccoon or coyote in captivity prohibited -- Penalty.

(1) No person may hold in captivity a raccoon or coyote, except as provided by rules of the Agricultural and Wildlife Damage Prevention Board.

(2) The Division of Wildlife Resources, with the cooperation of the Department of Agriculture and Food and the Department of Health, shall enforce this section.

(3) Any violation of this section is a class B misdemeanor.

(4) This section does not prohibit a person from continuing to keep a raccoon or coyote that he owns as of the effective date of this act.

Amended by Chapter 82, 1997 General Session

4-24-1. Short title.

This chapter shall be known and may be cited as the "Utah Livestock Brand and Anti-theft Act."

Enacted by Chapter 2, 1979 General Session

4-24-2. Definitions.

As used in this chapter:

(1) "Brand" means any identifiable mark applied to livestock which is intended to show ownership.

(2) "Carcass" means any part of the body of an animal, including hides, entrails, and edible meats.

(3) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

(4) "Hide" means any skins or wool removed from livestock.

(5) "Livestock" means cattle, calves, horses, mules, sheep, goats, hogs, or domesticated elk.

(6) (a) "Livestock market" means a public market place consisting of pens or other enclosures where cattle, calves, horses, or mules are received on consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not mean:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of business; or

(ii) a place where an association of livestock breeders under its own management, offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

(7) "Mark" means any dulap, waddle, or cutting and shaping of the ears or brisket area of livestock which is intended to show ownership.

(8) "Slaughterhouse" means any building, plant, or establishment where animals are killed, dressed, or processed and their meat or meat products offered for sale for human consumption.

Amended by Chapter 378, 2010 General Session

4-24-3. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-24-4. Livestock Brand Board created -- Composition -- Terms -- Removal -- Quorum for transaction of business -- Compensation -- Duties.

(1) There is created the Livestock Brand Board consisting of seven members appointed by the governor as follows:

(a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of whom shall be a feeder operator;

(b) one dairyman recommended by the Utah Dairymen's Association;

(c) one livestock market operator recommended jointly by the Utah Cattlemen's Association and the Utah Dairymen's Association and the Livestock Market Association; and

(d) one horse breeder recommended by the Utah Horse Council.

(2) If a nominee is rejected by the governor, the recommending association shall submit another nominee.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) (a) A member may, at the discretion of the governor, be removed at the request of the association that recommended the appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) One member elected by the board shall serve as chair for a term of one year and be responsible for the call and conduct of meetings of the Livestock Brand Board. Attendance of a simple majority of the members at a duly called meeting shall constitute a quorum for the transaction of official business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The Livestock Brand Board with the cooperation of the department shall direct the procedures and policies to be followed in administering and enforcing this chapter.

Amended by Chapter 286, 2010 General Session
Amended by Chapter 324, 2010 General Session

4-24-5. Central Brand and Mark Registry -- Division of state into mark districts -- Identical or confusingly similar brands -- Publication of registered brands and marks.

(1) The department shall maintain a central Brand and Mark Registry which shall list each brand or mark recorded in this state. For each brand or mark registered the list shall specify:

(a) the name and address of the registrant;

(b) a facsimile of the brand recorded or a diagram showing the kind of mark recorded;

(c) the location of the brand or mark upon the animal; and

(d) the date the brand or mark is filed in the registry.

(2) The commissioner may divide the state into districts for the purpose of recording marks but no mark which in the opinion of the commissioner is identical or confusingly similar to a mark previously recorded in a district shall be recorded.

(3) No brand which in the opinion of the commissioner is identical or confusingly similar to a brand previously filed in the central brand and mark registry shall be

recorded. If it appears that two or more identical or confusingly similar brands or marks have been recorded, the brand or mark first recorded shall prevail over a later conflicting brand or mark; in which event, the later brand or mark shall be cancelled and all recording fees refunded to the owner.

(4) The commissioner shall publish from time to time a list of all brands and marks recorded in the central Brand and Mark Registry and may issue supplements to such publication containing additional brands and marks or changes in ownership of brands and marks recorded after the last publication. The brand book shall contain a facsimile of all brands and marks recorded together with the owner's name and address. The commissioner shall send one copy of the brand book and each supplement to each brand inspector, county clerk, county sheriff, livestock organization, and any other person deemed appropriate. Brand books and supplements shall be available to the public at the cost of printing and distribution per book or supplement.

Enacted by Chapter 2, 1979 General Session

4-24-6. State may be divided into brand inspection districts -- Description filed with county clerk and sheriff.

The commissioner, to facilitate and improve brand inspection, may divide the state into brand inspection districts. A description covering each district shall be filed by the department with each county clerk and county sheriff in the state. District boundaries may be changed as considered necessary by the commissioner, with the approval of the Livestock Brand Board. Brand inspection stations within brand inspection districts may be located and established by the commissioner to assist in the enforcement of this chapter.

Amended by Chapter 42, 1988 General Session

4-24-7. Recordation of brand or mark.

(1) Application for a recorded brand or mark shall be made to the department upon forms prescribed and furnished by it. The application shall contain such information as the commissioner prescribes. No application shall be approved without payment of the appropriate recording fee. Upon receipt of a proper application, payment of the recording fee, and recordation of the brand or mark in the central Brand or Mark Registry of the department, the commissioner shall issue the applicant a certified copy of recording which entitles the applicant to the exclusive use of the brand or mark recorded.

(2) Each recorded brand or mark filed with the central Brand and Mark Registry shall expire during the calendar year 1980, and during each fifth year thereafter. The department shall give notice in writing to all persons who are owners of recorded brands and marks within a reasonable time prior to the date of expiration of recordation. Brand or mark renewal is effected by filing an appropriate application with the department together with payment of the renewal fee. A recorded brand or mark, not timely renewed, shall lapse and be removed from the central Brand and Mark Registry.

Enacted by Chapter 2, 1979 General Session

4-24-8. Fees for recordation, transfer, renewal, and certified copies of brands and marks.

The department, with the approval of the Livestock Brand Board, shall charge and collect fees for the recordation, transfer, and renewal of any brand or mark in each position, and may charge a fee for a certified copy of the recordation. The fees shall be determined by the department pursuant to Subsection 4-2-2(2).

Amended by Chapter 130, 1985 General Session

4-24-9. Effect of recorded brand or mark -- Transfer -- Reservation of certain brands.

The owner of a recorded brand or mark has a vested property right in it which is transferable by a duly acknowledged instrument; provided, that a transferee has no rights in the brand or mark until the instrument of transfer is recorded with the department. No person however, other than a member of the Ute Indian Tribe has any vested property right in the brand "ID" which is reserved exclusively for use by members of the Ute Indian Tribe on the Uintah and Ouray Reservation and no person other than a member of the Navajo Indian Tribe has any vested right in the brand "- N" (Bar N) which is reserved exclusively for use by members of the Navajo Indian Tribe on the Navajo Indian Reservation so long as it appears on the left shoulder of the animal branded. The left jaw of cattle is reserved exclusively for use by the department to identify diseased cattle.

Amended by Chapter 4, 1983 General Session

4-24-10. Livestock on open range or outside enclosure to be marked or branded -- Cattle upon transfer of ownership to be marked or branded -- Exceptions.

(1) (a) Except as provided in Subsections (1)(b) and (c), no livestock shall forage upon an open range in this state or outside an enclosure unless they bear a brand or mark recorded in accordance with this chapter.

(b) Swine, goats, and unweaned calves or colts are not required to bear a brand or mark to forage upon open range or outside an enclosure.

(c) Domesticated elk may not forage upon open range or outside an enclosure under any circumstances as provided in Chapter 39, Domesticated Elk Act.

(2) (a) Except as provided in Subsection (2)(b), all cattle, upon sale or other transfer of ownership, shall be branded or marked with the recorded brand or mark of the new owner within 30 days after transfer of ownership.

(b) No branding or marking, upon change of ownership, is required within the 30-day period for:

(i) unweaned calves;

(ii) registered or certified cattle;

(iii) youth project calves, if the number transferred is less than five; or

(iv) dairy cattle held on farms.

Amended by Chapter 324, 2010 General Session

4-24-11. Certificate of brand inspection necessary to effectuate change of ownership -- Exception.

(1) Except as provided in Subsection (2), the ownership of cattle, horses, domesticated elk, or mules may not be transferred to any other person, through sale or otherwise, without a certificate of brand inspection issued by a department brand inspector.

(2) (a) A brand inspection is not required to transfer ownership of dairy calves from the farm of origin under 60 days of age.

(b) Any person who transports dairy calves that have not been brand inspected pursuant to Subsection (2)(a) shall be required to show a sales invoice upon request.

Amended by Chapter 302, 1997 General Session

4-24-12. Livestock -- Verification of ownership through brand inspection -- Issuance of certificate of brand inspection -- Brand inspector may demand evidence of ownership -- Brand inspection of livestock seized by the federal government prohibited -- Exception.

(1) A brand inspector, as an agent of the department, shall verify livestock ownership by conducting a brand inspection during daylight hours.

(2) After conducting the brand inspection, the brand inspector, if satisfied that the livestock subject to inspection bears registered brands or marks owned by the owner of the livestock, shall issue a brand inspection certificate to the owner or owner's agent.

(3) The brand inspector shall record the number, sex, breed, and brand or mark on each animal inspected together with the owner's name.

(4) If any livestock subject to inspection bears a brand or mark other than that of the owner or, if no brand or mark appears on such livestock, the brand inspector may demand evidence of ownership such as a bill of sale or other evidence of ownership before issuing a brand inspection certificate.

(5) A brand inspector may not issue a brand inspection certificate for any privately owned livestock seized by the federal government unless:

(a) the brand inspector receives consent from the livestock's owner;

(b) the owner is unknown; or

(c) the brand inspector receives a copy of a court order authorizing the seizure.

Amended by Chapter 378, 2010 General Session

4-24-13. Brand inspection required prior to slaughter -- Exceptions.

(1) Except as provided in Subsection (2), a brand inspection is required before any cattle, calves, horses, domesticated elk, or mules are slaughtered.

(2) A person may slaughter cattle, calves, horses, or mules for that person's own use without a brand inspection if the requirements of Subsection 4-32-4(2) are met.

Amended by Chapter 302, 1997 General Session

4-24-14. Transportation by air or rail -- Brand inspection required --

Application for brand inspection -- Time and place of inspection.

(1) Except as provided in Subsection (2), no person may offer, or railroad or airline company accept, any cattle, calves, horses, domesticated elk, or mules for transport until they have been brand inspected.

(2) Before cattle, calves, horses, domesticated elk, or mules are transported by rail or air, the shipper shall:

(a) request the department to inspect the brands and marks of the animals being transported; and

(b) specify the time and place where the animals may be inspected.

(3) Cattle, calves, horses, domesticated elk, or mules transported by rail or air shall be brand inspected:

(a) at a stockyard or at the initial point of shipment; or

(b) if approved by the department, at a point or station along the transportation route.

(4) The department shall conduct the inspection at the time and place specified by the shipper or at any other time and place as determined by the department.

Amended by Chapter 302, 1997 General Session

4-24-15. Movement across state line -- Brand inspection required -- Exception -- Application for brand inspection -- Time and place of inspection.

(1) Except as provided in Subsection (2), a person may not drive or transport any cattle, calves, horses, domesticated elk, or mules from any place within this state to a place outside this state until they have been brand inspected.

(2) Subsection (1) does not apply if the animals specified in Subsection (1) customarily forage on an open range which transgresses the Utah state line and that of an adjoining state.

(3) The owner or person responsible for driving or transporting the animals shall:

(a) request the department to inspect the brands and marks of the animals to be moved; and

(b) specify the time and place where the animals may be inspected.

(4) The department shall conduct the inspection at the time and place specified by the owner or responsible person or at any other time and place as determined by the department.

Amended by Chapter 302, 1997 General Session

4-24-16. Transportation of cattle and calves between brand inspection districts -- Brand inspection required -- Exception -- No fee for reinspection -- Application for brand inspection -- Time and place of inspection -- Applicability to horses and mules.

(1) A person may not transport any cattle or calves from a point within a brand inspection district to a point outside the district, except as provided in Subsection (2), until the cattle or calves have been brand inspected, unless the department approves their transport subject to brand inspection at some point designated along the transport route. A brand inspection fee is not required to be paid upon reinspection of cattle or

calves being transported between districts from a summer or winter range or pasture if the cattle or calves were brand inspected in the district of origin. Before transport from one district to another, the owner or person responsible for the transport shall apply to the department to inspect the brands and marks of the animals to be moved. The application shall state the time and place where the animals may be inspected. Upon receipt of an application for brand inspection, the department shall conduct the inspection at the time and place specified in the application or at such other time and place as the department approves.

(2) Cattle or calves may be transported between brand inspection districts without brand inspection if they are destined for a livestock market in this state.

(3) Horses and mules may move within the state without a brand inspection, but a brand inspection is required on a change of ownership or to leave this state.

Amended by Chapter 139, 1988 General Session

4-24-17. Transportation of sheep, cattle, domesticated elk, horses, or mules -- Brand certificate or other evidence of ownership required -- Transit permit -- Contents.

(1) No person may transport any sheep, cattle, horses, domesticated elk, or mules without having an official state brand certificate or other proof of ownership in his possession.

(2) Each person transporting livestock for another person shall have a transit permit signed by the owner or the owner's authorized agent specifying the:

(a) name of the person driving the vehicle;

(b) date of transportation;

(c) place of origin or loading;

(d) destination;

(e) date of issuance; and

(f) number of animals being transported.

Amended by Chapter 302, 1997 General Session

4-24-18. Hides and pelts -- Bill of sale to accompany purchase -- Purchaser to maintain records -- Hides and records examination and inspection.

(1) Any person who buys a hide or pelt shall secure a bill of sale from the seller. The bill of sale shall be executed in duplicate; one copy being retained by the seller and the other by the buyer. The bill of sale shall specify the number of hides or pelts sold and the brand or mark borne by each hide and pelt.

(2) Each hide buyer within this state shall maintain a record specifying the name and address of the seller, date of purchase, and the brands or other identification found on the hides and pelts purchased. The hides and records of any hide buyer are subject to examination and inspection by the department at reasonable times and places.

Enacted by Chapter 2, 1979 General Session

4-24-19. Livestock markets -- Records to be maintained -- Retention of

records -- Schedule of fees and charges to be posted.

(1) Each owner or operator of a livestock market shall keep a record of:

(a) the date each consignment of livestock is received for sale together with the number of each type of livestock within such consignment;

(b) the name and address of each buyer;

(c) the date of sale and the number and species of livestock purchased by each buyer; and

(d) the brand or mark appearing on each animal at the time of sale to the buyer.

(2) The records mandated by this section shall be retained for a period of two years from the date on which the livestock market sold the livestock.

(3) A schedule of all fees and commission rates charged by the livestock market shall be posted in a conspicuous place on the premises of each market.

(4) A statement of the gross sales price, commission, and other fees charged for the sale of each consignment shall be available for inspection by the department, and a copy furnished the owner or consignor of the livestock.

Enacted by Chapter 2, 1979 General Session

4-24-20. Livestock sold at market to be brand inspected -- Proceeds of sale may be withheld -- Distribution of withheld proceeds -- Effect of receipt of proceeds by department -- Deposit of proceeds -- Use of proceeds if ownership not established.

(1) Livestock may not be sold at any livestock market until after they have been brand inspected by the department. Title to purchased livestock shall be furnished to the buyer by the livestock market.

(2) Upon notice from the department that a question exists concerning the ownership of consigned livestock, the operator of the livestock market or meat packing plant shall withhold the proceeds from the sale of the livestock for 60 days to allow the consignor of the questioned livestock to establish ownership. If the owner or consignor fails within 60 days to establish ownership to the satisfaction of the department, the proceeds of the sale shall be transmitted to the department. Receipt of the proceeds by the department shall relieve the livestock market or meat packing plant from further responsibility for the proceeds.

(3) Proceeds withheld under Subsection (2) shall be deposited in the Utah Livestock Brand and Anti-Theft Account created in Section 4-24-24. If ownership is not satisfactorily established within one year, the department shall use the proceeds for animal identification.

Amended by Chapter 378, 2010 General Session

4-24-21. Brand inspection fees.

The department with the approval of the Livestock Brand Board may set and collect a fee for the issuance of any certificate of brand inspection. Brand inspection fees incurred for the inspection of such animals at a livestock market may be withheld by the market and paid from the proceeds derived from their sale. The fee shall be determined by the department pursuant to Subsection 4-2-2(2).

Amended by Chapter 130, 1985 General Session

4-24-22. Travel permit in lieu of brand inspection certificate -- Fees -- Permit to accompany animal.

The department may issue a permit upon the payment of a fee determined by the department pursuant to Subsection 4-2-2(2), in lieu of a certificate of brand inspection, for the transport of any show horse, show mule, or show cattle within or outside the state. The words "travel permit" shall be stamped or printed on the permit. A permit shall accompany each show animal while it is in transit and shall identify the animal to which it applies by age, sex, color, brand, mark, and scars. A travel permit is valid for the calendar year of the date of issuance, which date shall appear on the permit.

Amended by Chapter 130, 1985 General Session

4-24-23. Lifetime permit in lieu of brand inspection certificate -- Fees -- Permit to accompany animal -- Transfer.

The department may issue a "lifetime" permit upon the payment of a fee determined by the department pursuant to Subsection 4-2-2(2), in lieu of a certificate of brand inspection, for the transport of any horse or mule within or outside the state. The words "lifetime travel permit" shall be stamped or printed on the permit. The permit shall accompany each horse or mule while it is in transit and shall identify the animal to which it applies by age, sex, color, brand, and scars. A lifetime transportation permit is valid for as long as the horse or mule to which it applies continues to be owned by the person to whom the permit is issued. A lifetime permit is transferable upon the transfer of ownership of such an animal, upon application for transfer and the payment of a permit transfer fee to the department in an amount determined by the department pursuant to Subsection 4-2-2(2).

Amended by Chapter 130, 1985 General Session

4-24-24. Utah Livestock Brand and Anti-Theft Account created -- Deposit of fees -- Purpose of expenditures.

(1) There is created within the General Fund a restricted account known as the Utah Livestock Brand and Anti-Theft Account.

(2) The following money shall be deposited into the Utah Livestock Brand and Anti-Theft Account:

(a) money received by the department under any provision of this chapter; and

(b) money received by the department under any provision of Title 4, Chapter 39, Domesticated Elk Act.

(3) Money in the Utah Livestock Brand and Anti-Theft Account shall be used for the administration of this chapter and of Title 4, Chapter 39, Domesticated Elk Act.

Amended by Chapter 302, 1997 General Session

4-24-25. Unlawful acts specified -- Allegation concerning evidence of ownership relative to hides.

(1) It is unlawful for any person to:

(a) permit any cattle, calves, horses, mules, or sheep, except unweaned calves or colts, that are not branded or marked in accordance with this chapter, to forage upon an open range in this state or outside an enclosure;

(b) brand or mark any livestock with a brand or mark which is not a matter of record on the central brand and mark registry;

(c) obliterate, change, or remove a recorded brand or mark; or

(d) destroy, mutilate, or conceal any hide with intent to, or for the purpose of, removing evidence of ownership of the hide, or ownership of the animal from which the hide was removed.

(2) In any prosecution for violation of this section, the state need not allege the ownership of the hide, or the animal or carcass from which the hide was removed; the complaint or information being sufficient if it alleges that ownership is unknown and that the hide is not the property of the defendant.

Enacted by Chapter 2, 1979 General Session

4-24-26. Use of vehicle to transport stolen livestock prohibited -- Vehicle subject to seizure and sale -- Procedure for sale -- Defense.

No person shall use any vehicle for the transportation of stolen livestock or carcasses. Any vehicle used in transporting stolen livestock or carcasses is subject to seizure and public sale by the sheriff of the county where it is found.

No sale shall be made, however, until written notice of the proposed sale is served upon the person in whose custody the vehicle is found. Such person has 10 days after service of the notice of proposed sale to respond to the notice, in which event, no sale shall be conducted until after the issue of ownership or any other issues are litigated in a court of competent jurisdiction. A stolen vehicle used for unlawful transportation is not subject to seizure and sale if the owner of the vehicle is not acting in concert with the thief.

Enacted by Chapter 2, 1979 General Session

4-24-28. Enforcement -- Brand inspector's powers delineated.

(1) A brand inspector is empowered with the authority of a special function officer for the purpose of enforcing this chapter and such an inspector may, if deemed proper, stop any vehicle carrying livestock or livestock carcasses for the purpose of examining brands, marks, certificates of brand inspection, and bills of lading or bills of sale relating to the livestock in transit.

(2) Brand inspectors may enter any premises where livestock are kept or maintained for the purpose of examining brands or marks. If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of examining brands or marks or other evidence of ownership.

Amended by Chapter 10, 1986 Special Session 2

4-24-29. Commissioner authorized to cooperate with local governments, other states, or federal government in enforcement.

The commissioner is empowered with authority, if deemed necessary, to cooperate or enter into cooperative agreements with authorities in any city, town, or county within the state, or with federal authorities, or with authorities in another state for the purpose of securing assistance in the administration and enforcement of this chapter.

Enacted by Chapter 2, 1979 General Session

4-24-30. Commission to appoint supervisor for brand inspection -- Appointment subject to approval -- Salary.

The commissioner shall appoint a state supervisor for livestock brand inspection, but such appointment is subject to the approval of the Livestock Brand Board. The salary or compensation of the supervisor shall be fixed in accordance with standards adopted by the Division of Finance.

Amended by Chapter 20, 1995 General Session

4-25-1. Definition.

For the purpose of this chapter "estray" means any unbranded sheep, cattle, horses, mules, or asses found running at large, or any branded sheep, cattle, horses, mules, or asses found running at large whose owner cannot be found after reasonable search, or any swine found running at large whose owner cannot be found after reasonable search; but it does not mean nor include any unweaned animal specified in this section that is running with its mother.

Amended by Chapter 139, 1988 General Session

4-25-2. County responsibility for estrays -- Contracts with other local governments authorized.

Each county is responsible for the disposition of all estrays found within its boundaries. Each county in the discharge of its responsibility, however, may contract upon mutually agreeable terms with any city, town, or other county with an animal control office to perform any or all of the functions imposed by this chapter.

Amended by Chapter 7, 1983 General Session

4-25-3. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-25-4. Possession of estrays -- Determination and location of owner -- Sale -- Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.

(1) (a) Except as provided in Section 4-25-5, a county shall:

(i) take physical possession of an estray it finds within its boundaries; and

(ii) attempt to determine the name and location of the estray's owner.

(b) The department shall assist a county that requests its help in determining the name and location of the owner or other person responsible for the estray.

(c) (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property Act, if the county cannot determine the estray's owner, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the estray shall be sold at a livestock or other appropriate market.

(ii) The proceeds of a sale under Subsection (1)(c)(i), less the costs described in Subsection (1)(c)(iii), shall be paid to the county selling the estray.

(iii) The livestock or other market conducting the sale under Subsection (1)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

(2) A county shall publish notice of the sale of an estray:

(a) at least once 10 days before the date of the sale; and

(b) in a publication with general circulation within the county where the estray was taken into custody.

(3) A purchaser of an estray sold under this section shall receive title to the estray free and clear of all claims of the estray's owner and a person claiming title through the owner.

(4) A county that complies with the provisions of this section is immune from liability for the sale of an estray sold at a livestock or other appropriate market.

(5) Notwithstanding the requirements of Subsection (1)(c), a county may employ a licensed veterinarian to euthanize an estray if the licensed veterinarian determines that the estray's physical condition prevents the estray from being sold.

Amended by Chapter 282, 2009 General Session

4-25-5. Report of estrays -- Possession -- Relief from liability.

(1) As used in this section, "division" means the Division of Wildlife Resources.

(2) A person, other than an official of the county or of an animal control office under contract with the county, who finds an estray shall report it to the county or animal control office immediately.

(3) Upon receipt of notification under Subsection (2), the county or the animal control office shall:

(a) take possession of the estray; or

(b) if appropriate, authorize the person in possession of the estray to maintain and care for it pending determination and location of the estray's owner.

(4) A person who gives notice of an estray and delivers it to the county or animal control office is not liable to third parties on account of the estray to the extent of the value of the animal.

(5) (a) If an employee of the division, acting in the employee's official capacity, finds an estray, the employee shall:

(i) comply with the requirements of Subsection (2); and

(ii) make a reasonable attempt to contact the estray's owner.

(b) The county or animal control office receiving a report of an estray from an employee of the division shall:

(i) take possession of the estray; or

(ii) authorize the division in writing or through electronic means to take possession of the estray.

(c) If the county or animal control office does not comply with Subsection (5)(b) within 72 hours from the time the division reports an estray, the division may take possession of the estray.

(d) If the division takes possession of the estray, the division shall:

(i) make a reasonable attempt to return the estray to the estray's owner; or

(ii) if unable to return the estray to the estray's owner, deliver the estray to the county or animal control office.

(e) If the division is unable to take possession of the estray after a reasonable attempt, the division may cause the death of the estray if the division determines that the estray presents a material threat to wildlife by:

(i) predation;

(ii) pathogen transmission; or

(iii) genetic introgression.

(f) If the division causes the death of an estray under Subsection (5)(e), the division shall:

(i) compensate the owner of the estray at full market value of the estray; or

(ii) if the owner of the estray cannot be determined, deposit an amount equal to the full market value of the estray into the Agricultural and Wildlife Damage Prevention Account created in Section 4-23-7.5.

(6) Notwithstanding the requirements of Subsection (5), the division may immediately take possession of an estray or cause an estray to move away from wildlife if the estray presents an imminent material threat to wildlife by:

(a) predation;

(b) pathogen transmission; or

(c) genetic introgression.

Amended by Chapter 282, 2009 General Session

4-25-6. Compensation for care of estrays -- Liability of county -- Notice required.

(1) A person who finds an estray and who, after giving notice is authorized by the county to maintain and care for it, is entitled to compensation from the owner, or from the county, as the case may be, for the reasonable costs of feeding and maintaining the animal; provided, that the county is liable for such cost only if the owner is not located after diligent search.

(2) No person who finds an estray however, is entitled to reimbursement for feed and maintenance or for any other cost incurred on behalf of the estray before such time

as notice of the estray is given to the county or to the appropriate animal control office.

Amended by Chapter 7, 1983 General Session

4-25-7. County legislative body authorized to adopt fence ordinance -- Lawful fence to be specified by ordinance -- Dividing the county into divisions for different fencing regulations.

(1) A county legislative body may, by ordinance, declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property.

(2) If an ordinance is adopted under Subsection (1), the county legislative body:

(a) shall through ordinance declare and specify what constitutes a lawful fence; and

(b) may divide the county into divisions and prescribe different fencing regulations for each division.

Amended by Chapter 196, 2009 General Session

4-25-8. Owner liable for trespass of animals -- Exception -- Intervention by county representative.

(1) The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within 10 days after written notification is sent to its owner, a county representative may sell the animal to cover costs incurred.

(3) Notwithstanding Subsections (1) and (2), the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person is not liable in a civil action to the owner or occupant of the premises for damage inflicted by the trespass if:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102; and

(b) the premises that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.

Amended by Chapter 118, 2005 General Session

4-25-9. Animals running at large -- Prohibition -- Limited exception.

No person who owns or is in possession of a stallion, jack, or ridgeling over 18 months old, or a ram over three months old, shall permit it to run at large within the limits of, or on the summer range of, any town or settlement; provided, that two-thirds of the voters of any county or isolated part of a county may elect through an election to

make this section ineffective in all or part of the county during part of the year.

Enacted by Chapter 2, 1979 General Session

4-25-10. Bulls -- Number required on range during breeding season.

No person during breeding season shall turn loose or range any cattle upon a federal range or forest reserve located in this state without ranging one bull for every 30 head of female breeding cattle ranged; provided, that a person ranging any portion of 30 head of female breeding cattle may arrange for an interest in a bull which is ranging on the federal range or the forest reserve where such breeding cattle are located.

Enacted by Chapter 2, 1979 General Session

4-25-11. Determination and enforcement of bull running policy by range association.

A local range association may determine and enforce a general policy regarding the type and quality of bulls allowed to run at large upon a community allotment of public lands located in this state.

Repealed and Re-enacted by Chapter 139, 1988 General Session

4-25-12. Allowing swine to run at large -- Class B misdemeanor.

(1) A person is guilty of a class B misdemeanor if the person:

(a) is in control of a swine; and

(b) allows the swine to run at large.

(2) A person described in Subsection (1) is liable for damage caused by the swine running at large.

Repealed and Re-enacted by Chapter 331, 2012 General Session

4-25-12.1. Release of swine for hunting purposes.

A person may not release swine on public or private property for hunting purposes.

Enacted by Chapter 331, 2012 General Session

4-25-14. Impounded livestock -- Determination and location of owner -- Sale -- Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.

(1) As used in this section, "impounded livestock" means the following animals seized and retained in legal custody:

(a) cattle;

(b) calves;

(c) horses;

(d) mules;

(e) sheep;

(f) goats;
(g) hogs; or
(h) domesticated elk.
(2) (a) A county may:
(i) take physical possession of impounded livestock seized and retained within its boundaries; and
(ii) attempt to determine the name and location of the impounded livestock's owner.
(b) The department shall assist a county who requests help in locating the name and location of the owner or other person responsible for the impounded livestock.
(c) (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property Act, if the county cannot determine ownership of the impounded livestock, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the impounded livestock shall be sold at a livestock or other appropriate market.
(ii) The proceeds of a sale under Subsection (2)(c)(i), less the costs described in Subsection (2)(c)(iii), shall be paid to the State School Fund created by the Utah Constitution Article X, Section 5, Subsection (1).
(iii) The livestock or other market conducting the sale under Subsection (2)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.
(3) A county shall publish the intended sale of the impounded livestock:
(a) at least 10 days prior to the date of sale; and
(b) in a publication with general circulation within the county where the impounded livestock was taken into custody.
(4) A purchaser of impounded livestock sold under this section shall receive title to the impounded livestock free and clear of all claims of the livestock's owner or a person claiming title through the owner.
(5) If a county complies with the provisions of this section, it is immune from liability for the sale of impounded livestock sold at a livestock or other appropriate market.
(6) Notwithstanding the requirements of Subsection (2)(c), a county may employ a licensed veterinarian to euthanize an impounded livestock if the licensed veterinarian determines that the impounded livestock's physical condition prevents the impounded livestock from being sold.

Amended by Chapter 282, 2009 General Session

4-26-101. Failure to close entrance to enclosure -- Class C misdemeanor -- Damages.

A person who willfully throws down a fence or opens bars or gates into any enclosure other than the person's own enclosure or into any enclosure jointly owned or occupied by such person and others, and leaves it open is guilty of a class C misdemeanor, and is liable in damage for any injury sustained by any person as a result of such an act.

Renumbered and Amended by Chapter 331, 2012 General Session

4-26-102. Adjoining landowners -- Partition fences -- Contribution.

(1) If two or more persons agree to a fence enclosure or to the construction of a partition fence, the cost of construction and maintenance of the fence shall be apportioned between each party to the agreement based upon the amount of land enclosed.

(2) A person who is a party to an agreement described in Subsection (1) and who fails to maintain such person's part of the fence is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the fence.

(3) If a person has enclosed land with a fence and the owner of adjoining land desires to enclose land adjoining the fence so that the existing fence or any part of it will become a partition fence between such tracts of land, the owner of the adjoining land shall, before making the enclosure, pay to the owner of the existing fence one-half of the value of all that part of the fence that will become a partition fence; and when one party ceases to improve or cultivate his land or opens his enclosure he may not take away any part of the partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30 days after notice, pays for the value of such fence; nor shall the partition fence be removed if the crops enclosed by it will be exposed to injury.

Renumbered and Amended by Chapter 331, 2012 General Session

4-26-103. Definitions -- Qualified landowners' and qualified adjoining landowners' partition fences -- Contribution -- Civil action for damages.

(1) As used in this section:

(a) "Qualified adjoining landowner" means a private landowner whose land adjoins the land of a qualified landowner and is used for grazing livestock or as habitat for big game wildlife and:

(i) is land which qualifies under the definition of "conservation easement" as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is "land in agricultural use" that meets the requirements of Section 59-2-502.

(b) "Qualified landowner" means a private landowner whose land is used for grazing livestock and:

(i) is land which qualifies under the definition of "conservation easement" as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is "land in agricultural use" that meets the requirements of Section 59-2-502.

(2) A qualified landowner may require the qualified adjoining landowner to pay for one-half of the cost of the fence if:

(a) the fence is or becomes a partition fence separating the qualified landowner's land from that belonging to the qualified adjoining landowner;

(b) the cost is reasonable for that type of fence;

(c) that type of fence is commonly found in that particular area; and

(d) the construction of the fence is no more expensive than the cost for posts,

wire, and connectors.

(3) If the qualified adjoining landowner refuses, the qualified landowner may maintain a civil action against the qualified adjoining landowner for one-half of the cost of that portion of the fence.

(4) The cost of the maintenance of the fence shall also be apportioned between each party based on the amount of land enclosed. A party who fails to maintain that party's part of the fence is also liable in a civil action for any damage sustained by the other party as a result of the failure to maintain the fence.

Renumbered and Amended by Chapter 331, 2012 General Session

4-30-1. Definitions.

For the purpose of this chapter:

(1) "Consignor" or "shipper" means any person who consigns, ships, or delivers livestock to a livestock market for storage, handling, or sale.

(2) (a) "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not include:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of such business; or

(ii) a place where an association of livestock breeders or an individual livestock breeder offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

(3) "Person" means an individual, partnership, corporation, or association.

Amended by Chapter 298, 1999 General Session

4-30-2. Livestock Market Committee created -- Composition -- Terms -- Removal -- Compensation -- Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the commissioner:

(a) one member recommended by the livestock market operators in the state;

(b) one member recommended by the Utah Cattlemen's Association;

(c) one member recommended by the Utah Dairymen's Association;

(d) one member recommended by the Utah Woolgrowers' Association;

(e) one member recommended by the horse industry;

(f) one member recommended by the Utah Farm Bureau Federation; and

(g) one member recommended by the Utah Farmers Union.

(2) Notwithstanding the requirements of Subsection (1), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) No more than four members shall be members of the same political party.

(4) (a) The commissioner may remove a member of the committee at the

request of the association or group which recommended the member's appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The Livestock Market Committee shall elect a chair from its membership, who shall serve for a term of office of two years, but may be reelected for subsequent terms.

(6) (a) The chair is responsible for the call and conduct of meetings.

(b) Four members constitute a quorum for the transaction of official business.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Amended by Chapter 286, 2010 General Session

4-30-3. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

4-30-4. License required -- Application -- Fee -- Expiration -- Renewal.

(1) (a) No person may operate a livestock market in this state without a license issued by the department.

(b) Application for a license shall be made to the department upon forms prescribed and furnished by it. The application shall specify:

(i) if the applicant is an individual, the name, address, and date of birth of the applicant; or

(ii) if the applicant is a partnership, corporation, or association, the name, address, and date of birth of each person who has a financial interest in the applicant and the amount of each person's interest;

(iii) a certified statement of the financial assets and liabilities of the applicant detailing:

(A) current assets;

(B) current liabilities;

(C) long-term assets; and

(D) long-term liabilities;

(iv) a legal description of the property where the market is proposed to be located, its street address, and a description of the facilities proposed to be used in connection with it;

(v) a schedule of the charges or fees the applicant proposes to charge for each service rendered; and

(vi) a detailed statement of the trade area proposed to be served by the applicant, the potential benefits which will be derived by the livestock industry, and the specific services the applicant intends to render at the livestock market.

(2) (a) Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection 4-2-2(2), and a favorable recommendation by the Livestock Market Committee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license allowing the applicant to operate the livestock market proposed in the application valid through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(b) A livestock market license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(3) No livestock market original or renewal license may be issued until the applicant has provided the department with a certified copy of a surety bond filed with the United States Department of Agriculture as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

Amended by Chapter 298, 1999 General Session

4-30-5. Hearing on license application -- Notice of hearing.

(1) Upon the filing of an application, the chairman of the Livestock Market Committee shall set a time for hearing on the application in the city or town nearest the proposed site of the livestock market and cause notice of the time and place of the hearing together with a copy of the application to be forwarded by mail, not less than 15 days before the hearing date, to the following:

(a) each licensed livestock market operator within the state; and

(b) each livestock or other interested association or group of persons in the state that has filed written notice with the committee requesting receipt of notice of such hearings.

(2) Notice of the hearing shall be published 14 days before the scheduled hearing date:

(a) in a daily or weekly newspaper of general circulation within the city or town where the hearing is scheduled; and

(b) on the Utah Public Notice Website created in Section 63F-1-701.

Amended by Chapter 90, 2010 General Session

4-30-6. Livestock Market Committee -- Guidelines delineated for decision on application.

(1) The Livestock Market Committee in determining whether to recommend approval or denial of the application shall consider:

(a) the applicant's proven or potential ability to comply with the Packers and Stockyards Act, 7 U.S.C. Sec. 221 through 229b;

(b) the financial stability, business integrity, and fiduciary responsibility of the applicant;

(c) the livestock marketing benefits which potentially will be derived from the establishment and operation of the public livestock market proposed;

(d) the need for livestock market services in the trade area proposed;

(e) the adequacy of the livestock market location and facilities proposed in the application, including facilities for health inspection and testing;

(f) whether the operation of the proposed livestock market is likely to be permanent; and

(g) the economic feasibility of the proposed livestock market based on competent evidence.

(2) Any interested person may appear at the hearing on the application and give an opinion or present evidence either for or against granting the application.

Amended by Chapter 179, 2007 General Session

4-30-7. Transfer of livestock market license permitted -- Conditions.

(1) No livestock market license is transferable to another person without the prior approval of the commissioner.

(2) A change in the membership of a partnership or association, or the sale or transfer of a 25% or greater interest in the stock ownership of a corporate livestock market shall be considered a transfer of the livestock market license and is subject to the requirements of this section.

(3) Application to allow transfer of a livestock market license shall be made to the department on a form prescribed and furnished by it.

(4) The commissioner may grant a transfer of the license:

(a) if the proposed transferee meets all the requirements specified for an original license in Section 4-30-4; and

(b) based on the criteria specified in Section 4-30-6.

Amended by Chapter 298, 1999 General Session

4-30-7.5. Financial responsibility.

Each livestock market shall maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities.

Enacted by Chapter 298, 1999 General Session

4-30-7.6. Custodial accounts for trust funds.

(1) (a) Each payment that a livestock buyer makes to a livestock market selling on commission is a trust fund.

(b) Funds deposited in custodial accounts are trust funds.

(2) Each livestock market engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "custodial account for shippers' proceeds" or some similar identifying designation, to

disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) (a) The livestock market shall deposit in its custodial account before the close of the next business day after the livestock is sold:

(i) the proceeds from the sale of the livestock that have been collected; and

(ii) an amount equal to the proceeds receivable from the sale of livestock that are due from:

(A) the livestock market;

(B) any owner, officer, or employee of the livestock market; and

(C) any buyer to whom the livestock market has extended credit.

(b) The livestock market shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the livestock market.

(4) The custodial account shall be drawn on only for payment of:

(a) the net proceeds to the consignor or shipper, or to any person that the livestock market knows is entitled to payment;

(b) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay; and

(c) to obtain any sums due the livestock market as compensation for its services.

(5) (a) Each livestock market shall keep accounts and records that will disclose at all times the handling of funds in the custodial account.

(b) Accounts and records shall at all times disclose the name of the consignors and the amount due and payable to each from funds in the custodial account.

(6) The custodial account shall be established and maintained in a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

Amended by Chapter 378, 2010 General Session

4-30-8. Weighman license required -- Application -- Fee -- Bond -- Expiration -- Renewal.

(1) No person may act as a weighman at a livestock market without a license from the department. Application for a weighman's license shall be made to the department upon forms prescribed and furnished by it. Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection 4-2-2(2), and deposit of either a corporate surety bond or trust fund agreement with the department in the principal amount of $1,000, the commissioner shall issue a license allowing the applicant to act as a weighman through December 31 of the year in which the license is issued, subject to suspension or revocation for cause. A weighman's license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection 4-2-2(2).

(2) Each weighman's surety bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of persons who

consign livestock to a livestock market. The bond shall further be conditioned for the faithful and accurate weighing of livestock consigned to a livestock market, and for the payment of court costs and a reasonable attorney's fee to the prevailing party incident to any suit brought upon the bond.

Amended by Chapter 130, 1985 General Session

4-30-9. Suspension or revocation of license -- Grounds.

The department is authorized to suspend or revoke the license of any livestock market or livestock market weighman who:

(1) violates any provision of this chapter or any rule promulgated under this chapter; or

(2) engages in any fraudulent or deceitful activity.

Amended by Chapter 298, 1999 General Session

4-31-101. Title.

This chapter is known as "Control of Animal Disease."

Enacted by Chapter 331, 2012 General Session

4-31-102. Dead domestic animals -- Duty of owner to bury or otherwise dispose of them -- Liability for costs.

(1) An owner or other person responsible for a domestic animal that dies shall bury or dispose of the animal within two business days after the day on which the owner or other person responsible for the animal becomes aware that the animal is dead.

(2) If the owner or other person responsible for the dead animal cannot be found, the county, city, or town within which the dead animal is found, shall, at the political subdivision's expense, bury the dead animal.

(3) A county, city, or town that incurs expense under this section is entitled to reimbursement from the owner of the dead animal.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-103. Dead animals -- Deposit on another's land prohibited.

A person may not deposit a dead animal upon the land of another person without the landowner's consent.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-104. Penalty.

A person who violates Section 4-31-102 or 4-31-103 is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-105. Outbreak of contagious or infectious disease -- Assistance of federal authorities.

If there is an outbreak of contagious or infectious disease among domestic animals in this state that imperils livestock in adjoining states, the commissioner shall seek the assistance of the United States Department of Agriculture, Animal and Plant Health Inspection Service in preventing the spread of the disease to other states.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-106. Epidemic of contagious or infectious disease -- Condemnation or destruction of infected or exposed livestock -- Destruction of other property.

(1) If there is an outbreak of contagious or infectious disease of epidemic proportion among domestic animals in this state that imperils livestock, the commissioner, with approval of the governor, may condemn, destroy, or dispose of any infected livestock or any livestock exposed to, or deemed by the commissioner capable of, communicating disease to other domestic animals.

(2) The commissioner may, with gubernatorial approval, condemn and destroy any barns, sheds, corrals, pens, or other property necessary to prevent the spread of contagion or infection.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-107. Appraisal of fair market value before destruction.

(1) Before any livestock or property is condemned and destroyed under Section 4-31-106, an appraisal of the fair market value of the livestock or other property shall be forwarded to the commissioner by a panel of three qualified appraisers appointed as follows:

(a) one by the commissioner;

(b) one by the owner of the livestock or other property subject to condemnation; and

(c) one by the appraisers specified in Subsections (1)(a) and (b).

(2) After review, the commissioner shall forward the appraisal to the board of examiners described in Subsection 63G-9-201(2), together with the commissioner's recommendation concerning the amount, if any, that should be allowed.

(3) Any costs incurred in the appraisal shall be paid by the state.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-108. Slaughter for post-mortem examination.

The commissioner may order the slaughter and post-mortem examination of a diseased domestic animal if the exact nature of the animal's disease is not readily ascertained through other means.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-109. Department authorized to make and enforce rules concerning

brucellosis, trichomoniasis, and tuberculosis in livestock.

(1) The department may:

(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to control and eradicate brucellosis, trichomoniasis, and tuberculosis in livestock; and

(b) enforce the rules described in Subsection (1)(a).

(2) The department shall, in making the rules described in Subsection (1)(a), protect against negative impact on the interstate or intrastate commerce of livestock that is transferred, sold, or exhibited.

Enacted by Chapter 331, 2012 General Session

4-31-110. Dairy cattle subject to inspection for disease.

The department may inspect a dairy animal in the state for tuberculosis or other infectious or contagious disease at a reasonable time and place.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-111. Imported animals -- Health certificate.

Except as provided by rule made by the department, a person may not import an animal into this state unless the animal is accompanied by a health certificate that:

(1) meets the requirements of department rules; and

(2) is issued by a federally accredited veterinarian.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-112. Feeding garbage or plate waste to swine prohibited.

(1) As used in this section, "plate waste" means uneaten food from an establishment or institution that serves food.

(2) A person may not feed garbage or plate waste to a swine, unless the swine is slaughtered for home use.

(3) A person who violates this section is guilty of a class C misdemeanor.

Enacted by Chapter 331, 2012 General Session

4-31-113. Restrictions on movement of infected or exposed animals.

(1) A person who owns or has possession of an animal and knows that the animal is infected with, or has been exposed to, any contagious or infectious disease, may not:

(a) permit the animal to run at large, or come in contact with, an animal that can be infected; or

(b) sell, ship, trade, or give away an infected animal without disclosing that the animal is diseased or has been exposed to disease.

(2) The provisions of this section do not apply to protected wildlife that is:

(a) living in nature; and

(b) under the jurisdiction of the Division of Wildlife Resources.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-114. Report of vesicular disease.

(1) A person who identifies symptoms of vesicular disease in livestock shall immediately report it to the department.

(2) Failure of a veterinarian licensed in this state to report a diagnosed case of vesicular disease to the department constitutes ground for the revocation of such veterinarian's license.

(3) Failure by an owner of livestock to report symptoms of vesicular disease among the owner's livestock constitutes forfeiture of the right to claim an indemnity for an animal slaughtered on account of the disease.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-115. Contagious or infectious disease -- Duties of department.

(1) (a) The department shall investigate and may quarantine any reported case of contagious or infectious disease, or any epidemic, or poisoning affecting a domestic animal or an animal that the department believes may jeopardize the health of animals within the state.

(b) The department shall make a prompt and thorough examination of all circumstances surrounding the disease, epidemic, or poisoning and may order quarantine, care, or any necessary remedies.

(c) The department may also order immunization or testing and sanitary measures to prevent the spread of disease.

(d) Investigations involving fish or wildlife shall be conducted under a cooperative agreement with the Division of Wildlife Resources.

(2) (a) If the owner or person in possession of such animals, after written notice from the department, fails to take the action ordered, the commissioner is authorized to seize and hold the animals and take action necessary to prevent the spread of disease, including immunization, testing, dipping, or spraying.

(b) An animal seized for testing or treatment under this section shall be sold by the commissioner at public sale to reimburse the department for all costs incurred in the seizure, testing, treatment, maintenance, and sale of the animal unless the owner, before the sale, tenders payment for the costs incurred by the department.

(c) (i) No seized animal shall be sold until the owner or person in possession is served with a notice specifying the itemized costs incurred by the department and the time, place, and purpose of sale and the number of animals to be sold.

(ii) The notice shall be served at least three days in advance of sale in the manner:

(A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

(B) if the owner cannot be found after due diligence, in the manner prescribed for service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

(3) Any amount realized from the sale of the animal over the total charges shall be paid to the owner of the animal, if the owner is known or can by reasonable diligence

be found; otherwise, the excess shall remain in the General Fund.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-116. Quarantine -- Peace officers to assist in maintenance of quarantine.

(1) The commissioner may quarantine any infected domestic animal or area within the state to prevent the spread of infectious or contagious disease.

(2) A sheriff or other peace officer in the state shall, upon request of the commissioner, assist the department in maintaining a quarantine and arrest a person who violates it.

(3) The department shall pay all costs and fees incurred by any law enforcement authority in assisting the department.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-117. State chemist -- Assistance in diagnosis of disease.

The state chemist, upon submission by the commissioner, shall examine and analyze all tissue, grass, water, or other substances necessary in the proper diagnosis of disease or losses among livestock.

Renumbered and Amended by Chapter 331, 2012 General Session

4-31-118. Animal disease traceability.

The department may:

(1) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary for animal disease traceability and compliance with federal law regarding animal disease traceability; and

(2) enforce the rules described in Subsection (1).

Enacted by Chapter 331, 2012 General Session

4-31-119. Disease control of poultry, waterfowl, and game-birds.

(1) Except as provided in Subsection (2), the department may:

(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary for the control and prevention of disease in poultry, waterfowl, and game-birds; and

(b) enforce the rules described in Subsection (1)(a).

(2) The department may not make a rule under Subsection (1)(a) that relates to protected wildlife that is:

(a) living in nature; and

(b) under the jurisdiction of the Division of Wildlife Resources.

Enacted by Chapter 331, 2012 General Session

4-32-1. Short title.

This chapter shall be known as and may be cited as the "Utah Meat and Poultry Products Inspection and Licensing Act."

Enacted by Chapter 2, 1979 General Session

4-32-2. Purpose declaration.

(1) It is the purpose of this chapter to provide a meat and poultry inspection program in the state at least equal to the programs imposed under the Federal Meat Inspection Act, the federal Poultry Products Inspection Act, and the Humane Slaughter Act.

(2) The commissioner shall administer and enforce this chapter to accomplish this purpose.

Amended by Chapter 242, 2010 General Session

4-32-2.1. Adoption of federal provisions.

(1) The following federal laws, regulations, and standards are adopted by reference:

(a) 9 C.F.R. Part 300 through Part 500;

(b) the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(c) the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.; and

(d) the Humane Slaughter Act, 7 U.S.C. Sec. 1901 et seq.

(2) Changes to the federal laws, regulations, and standards referenced in Subsection (1) are considered incorporated as those changes are made.

Enacted by Chapter 242, 2010 General Session

4-32-2.2. Emergency rules.

The department may make emergency rules concerning the meat and poultry inspection program only in accordance with Section 63G-3-304.

Enacted by Chapter 242, 2010 General Session

4-32-3. Definitions.

As used in this chapter:

(1) "Adulterated" means any meat or poultry product that:

(a) bears or contains any poisonous or deleterious substance that may render it injurious to health, but, if the substance is not an added substance, the meat or poultry product is not considered adulterated under this subsection if the quantity of the substance in or on the meat or poultry product does not ordinarily render it injurious to health;

(b) bears or contains, by reason of the administration of any substance to the animal or otherwise, any added poisonous or added deleterious substance that in the judgment of the commissioner makes the meat or poultry product unfit for human food;

(c) contains, in whole or in part, a raw agricultural commodity and that commodity bears or contains a pesticide chemical that is unsafe within the meaning of

21 U.S.C. Sec. 346a;

(d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C. Sec. 379e; provided, that a meat or poultry product that is not otherwise considered adulterated under Subsection (1)(c) or (d) of this section is considered adulterated if use of the pesticide chemical, food additive, or color additive is prohibited in official establishments by federal law, regulation, or standard;

(f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) has been prepared, packaged, or held under unsanitary conditions if the meat or poultry product may have become contaminated with filth, or if it may have been rendered injurious to health;

(h) is in whole or in part the product of an animal that died other than by slaughter;

(i) is contained in a container that is composed, in whole or in part, of any poisonous or deleterious substance that may render the meat or poultry product injurious to health;

(j) has been intentionally subjected to radiation, unless the use of the radiation conforms with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

(k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or if damage or inferiority is concealed in any manner; or if any substance has been added, mixed, or packed with the meat or poultry product to increase its bulk or weight, or reduce its quality or strength, or to make it appear better or of greater value; or

(l) is margarine containing animal fat and any of the raw material used in the margarine consists in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal" means a domesticated or captive mammalian or avian species.

(3) "Animal food manufacturer" means any person engaged in the business of preparing animal food derived from animal carcasses or parts or products of the carcasses.

(4) "Ante mortem inspection" means an inspection of a live animal immediately before slaughter.

(5) "Broker" means any person engaged in the business of buying and selling meat or poultry products other than for the person's own account.

(6) "Capable of use as human food" means any animal carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by rules of the department to deter its use as human food.

(7) "Commissioner" includes a person authorized by the commissioner to carry out this chapter's provisions.

(8) "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(9) "Custom exempt processing" means processing meat or wild game as a service for the person who owns the meat or wild game and uses the meat and meat food products for the person's own consumption, including consumption by immediate

family members and non-paying guests.

(10) "Custom exempt slaughter":

(a) means slaughtering an animal as a service for the person who owns the animal and uses the meat and meat products for the person's own consumption, including consumption by immediate family members and non-paying guests; and

(b) includes farm custom slaughter.

(11) "Director of meat inspection" means a licensed graduate veterinarian whose duties and responsibilities are specified by the commissioner.

(12) "Diseased animal":

(a) means an animal that:

(i) is diagnosed with a disease not known to be cured; or

(ii) has exhibited signs or symptoms of a disease that is not known to be cured; and

(b) does not include an otherwise healthy animal that suffers only from injuries such as fractures, cuts, or bruises.

(13) "Farm custom slaughter" means custom exempt slaughtering of an animal for an owner without inspection.

(14) "Farm custom mobile unit" means a portable slaughter vehicle or trailer that is used by a farm custom slaughter licensee to slaughter animals.

(15) "Farm custom slaughter license" means a license issued by the department to allow farm custom slaughter.

(16) "Farm custom slaughter tag" means a tag that specifies the animal's identification and certifies its ownership, which is issued by the department through a brand inspector to the owner of the animal before it is slaughtered.

(17) "Federal acts" means:

(a) the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(b) the Federal Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.; and

(c) the Humane Slaughter Act, 7 U.S.C. 1901 et seq.

(18) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) (21 U.S.C. 301 et seq.), and any amendments to it.

(19) "Immediate container" means any consumer package, or any other container in which meat or poultry products not consumer packaged, are packed.

(20) "Inspector" means a licensed veterinarian or competent lay person working under the supervision of a licensed graduate veterinarian.

(21) "Label" means a display of printed or graphic matter upon any meat or poultry product or the immediate container, not including package liners, of any such product.

(22) "Labeling" means all labels and other printed or graphic matter:

(a) upon any meat or poultry product or any of its containers or wrappers; or

(b) accompanying a meat or poultry product.

(23) "Licensee" means a person who holds a valid farm custom slaughter license.

(24) "Meat" means the edible muscle and other edible parts of an animal, including edible:

(a) skeletal muscle;

(b) organs;

(c) muscle found in the tongue, diaphragm, heart, or esophagus; and

(d) fat, bone, skin, sinew, nerve, or blood vessel that normally accompanies meat and is not ordinarily removed in processing.

(25) "Meat establishment" means a plant or fixed premises used to:

(a) slaughter animals for human consumption; or

(b) process meat or poultry products for human consumption.

(26) "Meat product" means any product capable of use as human food that is made wholly or in part from any meat or other part of the carcass of any non-avian animal.

(27) "Misbranded" means any meat or poultry product that:

(a) bears a label that is false or misleading in any particular;

(b) is offered for sale under the name of another food;

(c) is an imitation of another food, unless the label bears, in type of uniform size and prominence, the word "imitation" followed by the name of the food imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this Subsection (27)(e), exemptions as to meat and poultry products not in containers may be established by rules of the department and that under this Subsection (27)(e)(ii), reasonable variations may be permitted, and exemptions for small packages may be established for meat or poultry products by rule of the department;

(f) does not bear any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) is a food for which a definition and standard of identity or composition has been prescribed by rules of the department under Section 4-32-7 if the food does not conform to the definition and standard and the label does not bear the name of the food and any other information that is required by the rule;

(h) is a food for which a standard of fill has been prescribed by rule of the department for the container and the actual fill of the container falls below that prescribed unless its label bears, in a manner and form as the rule specifies, a statement that it falls below the standard;

(i) is a food for which no standard or definition of identity has been prescribed under Subsection (27)(g) unless its label bears:

(i) the common or usual name of the food, if there be any; and

(ii) if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each; provided, that to the extent that compliance with the requirements

of this Subsection (27)(i)(ii) is impracticable, or results in deception or unfair competition, exemptions shall be established by rule;

(j) is a food that purports to be or is represented to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the department, after consultation with the Secretary of Agriculture of the United States, prescribes by rules as necessary to inform purchasers as to its value for special dietary uses;

(k) bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subsection are impracticable, exemptions shall be prescribed by rules of the department; or

(l) does not bear directly thereon and on its containers, as the department may prescribe by rule, the official inspection legend and establishment number of the official establishment where the product was prepared, and, unrestricted by any of the foregoing, other information as the department may require by rule to assure that the meat or poultry product will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain it in a wholesome condition.

(28) "Official certificate" means any certificate prescribed by rules of the department for issuance by an inspector or other person performing official functions under this chapter.

(29) "Official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(30) "Official establishment" means any establishment at which inspection of the slaughter of animals or the preparation of meat or poultry products is maintained under the authority of this chapter.

(31) "Official inspection legend" means any symbol prescribed by rules of the department showing that a meat or poultry product was inspected and passed in accordance with this chapter.

(32) "Official mark" means the official legend or any other symbol prescribed by rules of the department to identify the status of any animal carcass or meat or poultry product under this chapter.

(33) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity," have the same meanings for purposes of this chapter as ascribed to them in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(34) "Post mortem inspection" means an inspection of a slaughtered food animal's carcass after slaughter.

(35) "Poultry" means any domesticated bird, whether living or dead.

(36) "Poultry product" means any product capable of use as human food that is made wholly or in part from any poultry carcass, excepting products that contain poultry ingredients in relatively small proportion or that historically have not been considered by consumers as products of the poultry food industry, and that are exempted from definition as a poultry product by the commissioner.

(37) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(38) "Process" means to cut, grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.

(39) "Renderer" means any person engaged in the business of rendering animal carcasses, or parts or products of animal carcasses, except rendering conducted under inspection or exemption under this chapter.

(40) "Slaughter" means:

(a) the killing of an animal in a humane manner including skinning or dressing; or

(b) the process of performing any of the specified acts in preparing an animal for human consumption.

(41) "Wild game" means an animal, the products of which are food that is not classified as a domesticated food animal, captive game animal, or captive game bird, including the following when not domesticated:

(a) deer;

(b) elk;

(c) antelope;

(d) moose;

(e) bison;

(f) bear;

(g) rabbit;

(h) squirrel;

(i) raccoon; and

(j) birds.

Amended by Chapter 383, 2011 General Session

4-32-4. Meat establishment license -- Slaughtering livestock except in licensed meat establishment prohibited -- Exceptions -- Violation a misdemeanor.

(1) A person may not, except in a licensed meat establishment, slaughter animals for human consumption or assist other persons in the slaughter or processing of animals except as otherwise provided in Subsection (2), (3), or (4).

(2) A person who raises an animal or an employee of that person may slaughter an animal without a farm custom slaughter license if:

(a) slaughtering or processing animals is not prohibited by local ordinance;

(b) any hide, viscera, blood, or other tissue is disposed of by removal to a rendering facility, landfill, or by burial, as allowed by law;

(c) the meat or poultry product derived from the slaughtered animal is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests; and

(d) the meat or poultry product is marked "Not For Sale."

(3) Farm custom slaughter may be performed by a person who holds a valid farm custom slaughter license.

(4) A retail establishment that processes meat or poultry products primarily for sale to individual consumers at the retail establishment is exempt from provisions requiring licensing of a meat establishment if:

(a) the retail establishment is not engaged in slaughter operations;

(b) the retail establishment sells the processed meat and poultry products only to individual consumers at the retail establishment, or to restaurants or institutions for

use in meals served at those restaurants or institutions;

(c) the retail establishment's sales of processed meat and poultry products to restaurants or institutions do not exceed the federal adjusted dollar limitation, or 25% by dollar volume of all meat sales from the retail establishment, whichever is less;

(d) the retail establishment receives meat only from a meat establishment licensed under this chapter or inspected by the United States Department of Agriculture under 21 U.S.C. Sections 451 to 695;

(e) the operator of the retail establishment does not sell, to any person other than an individual consumer, any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment;

(f) the retail establishment does not sell any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment at a location other than the retail establishment; and

(g) the operator of the retail establishment does not sell, to any person other than an individual consumer, any meat product made by combining meat from different animal species at the retail establishment.

(5) Any person who violates this section, except as otherwise provided in Subsection (6), is guilty of a class C misdemeanor.

(6) Any person who offers for sale or sells any uninspected meat or poultry product is guilty of a class B misdemeanor.

Amended by Chapter 383, 2011 General Session

4-32-5. Meat establishment and farm custom slaughter licenses -- Application -- Fees -- Expiration -- Renewal.

(1) A person may not operate a meat establishment in the state without a meat establishment license issued by the department.

(2) (a) Application for a license to operate a meat establishment shall be made to the department upon a form prescribed and furnished by the department.

(b) Upon receipt of a proper application, compliance with all applicable rules, and the payment of an annual license fee determined by the department according to Subsection 4-2-2(2), the commissioner, if satisfied that the public convenience and necessity will be served, shall issue a license allowing the applicant to operate a meat establishment through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(c) A meat establishment license is annually renewable on or before December 31 of each year, upon the payment of an annual license renewal fee in an amount determined by the department according to Subsection 4-2-2(2).

(3) (a) Application for a farm custom slaughter license to engage in the business of slaughtering livestock shall be made to the department on a form prescribed and furnished by the department.

(b) Upon receipt of a proper application, compliance with all applicable rules, and payment of a license fee in an amount determined by the department according to Subsection 4-2-2(2), the commissioner shall issue a license allowing the applicant to engage in farm custom slaughtering.

(c) A farm custom slaughter license is annually renewable on or before

December 31 of each year, upon the payment of an annual renewal license fee in an amount determined by the department according to Subsection 4-2-2(2).

Amended by Chapter 242, 2010 General Session

4-32-6. Duties of person who holds a farm custom slaughter license.

Each person who holds a farm custom slaughter license shall:

(1) keep accurate records of each animal slaughtered including the name, address, and telephone number of each person for whom the animal is slaughtered, a full description of each animal slaughtered including age, brands, marks, or other identifying marks, proof of ownership, destination of the carcass for processing, and the date of slaughter;

(2) require that each animal presented for slaughter bear a farm custom slaughter tag;

(3) render the animal to be slaughtered insensible to pain by captive bolt, gunshot, electric shock, or other humane means before it is shackled, hoisted, thrown, cast, or cut; and

(4) stamp and tag the carcass of any slaughtered animal "Not For Sale."

Amended by Chapter 242, 2010 General Session

4-32-7. Mandatory functions, powers, and duties of department prescribed.

The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the following functions, powers, and duties, in addition to those specified in Chapter 1, Short Title and General Provisions, for the administration and enforcement of this chapter:

(1) The department shall require antemortem and postmortem inspections, quarantine, segregation, and reinspections by inspectors appointed for those purposes with respect to the slaughter of animals and the preparation of meat and poultry products at official establishments, except as provided in Subsection 4-32-8(13).

(2) The department shall require that:

(a) animals be identified for inspection purposes;

(b) meat or poultry products, or their containers be marked or labeled as:

(i) "Utah Inspected and Passed" if, upon inspection, the products are found to be unadulterated; and

(ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be adulterated; and

(c) condemned animal carcasses or products, which otherwise would be used for human consumption, be destroyed under the supervision of an inspector.

(3) The department shall prohibit or limit meat products, poultry products, or other materials not prepared under inspection procedures provided in this chapter, from being brought into official establishments.

(4) The department shall require that labels and containers for meat and poultry products:

(a) bear all information required by Section 4-32-3 if the product leaves the

official establishment; and

(b) be approved before sale or transportation.

(5) For official establishments required to be inspected under Subsection (1), the department shall:

(a) prescribe sanitary standards;

(b) require sanitary inspections; and

(c) refuse to provide inspection service if the sanitary conditions allow adulteration of any meat or poultry product.

(6) (a) The department shall require that any person engaged in a business referred to in Subsection (6)(b):

(i) keep accurate records disclosing all pertinent business transactions;

(ii) allow inspection of the business premises at reasonable times and examination of inventory, records, and facilities; and

(iii) allow samples to be taken.

(b) Subsection (6)(a) applies to any person who:

(i) slaughters animals;

(ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any meat or poultry products for human or animal consumption;

(iii) renders animals; or

(iv) buys, sells, or transports any dead, dying, disabled, or diseased animals, or parts of their carcasses that died by a method other than slaughter.

(7) (a) The department shall:

(i) adopt by reference rules and regulations under federal acts with changes that the commissioner considers appropriate to make the rules and regulations applicable to operations and transactions subject to this chapter; and

(ii) promulgate any other rules considered necessary for the efficient execution of the provisions of this chapter, including rules of practice providing an opportunity for hearing in connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1), (2), or (3) and prescribing procedures for proceedings in these cases.

(b) These procedures do not preclude requiring that a label or container be withheld from use, or inspection be refused under Subsections (1) and (5), or Subsection 4-32-8(3), pending issuance of a final order in the proceeding.

(8) (a) To prevent the inhumane slaughtering of animals, inspectors shall be appointed to examine and inspect methods of handling and slaughtering animals.

(b) Inspection of slaughtering establishments may be refused or temporarily suspended if animals have been slaughtered or handled by any method not in accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

(c) Before slaughtering an animal in accordance with requirements of Kosher, Halal, or a religious faith's requirements that discourage stunning of the animal, the person slaughtering the animal shall file a written request with the commissioner.

(9) (a) The department shall require an animal showing symptoms of disease during antemortem inspection, performed by an inspector appointed for that purpose, to be set apart and slaughtered separately from other livestock and poultry.

(b) When slaughtered, the carcasses of livestock and poultry are subject to careful examination and inspection in accordance with rules prescribed by the

commissioner.

Amended by Chapter 242, 2010 General Session
Amended by Chapter 324, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-32-8. Discretionary functions, powers, and duties of commissioner prescribed.

The commissioner may:

(1) remove inspectors from any official establishment that fails to:

(a) destroy condemned products pursuant to Subsection 4-32-7(2); or

(b) comply with any other of this chapter's requirements;

(2) refuse to provide inspection for any official establishment for any cause specified in Section 401 of the Federal Meat Inspection Act or Section 18 of the federal Poultry Products Inspection Act;

(3) withhold the use of labels and containers if the labeling is false or misleading or the containers are misleading in size or form;

(4) prescribe the type size and style to be used for labeling:

(a) information;

(b) definitions; and

(c) standards of identity, composition, or container fill;

(5) prescribe conditions for the storage and handling of meat and poultry products by any person who sells, freezes, stores, or transports these products to prevent them from becoming adulterated or misbranded;

(6) require that equines be slaughtered and prepared in official establishments separate from those where other animals are slaughtered or their products are prepared;

(7) require that the following people register the name and address of each place of business and all trade names:

(a) broker;

(b) renderer;

(c) animal food manufacturer;

(d) wholesaler;

(e) public warehouseman of meat or poultry products; or

(f) anyone engaged in the business of buying, selling, or transporting any:

(i) dead, dying, disabled, or diseased animals; or

(ii) parts of animal carcasses that died other than by slaughter;

(8) make inspections of official establishments at night, as well as during the day, if animals or meat and poultry products are slaughtered and prepared for commercial purposes in those establishments at night;

(9) divide the state into inspection districts and designate killing days and partial killing days for each official establishment;

(10) cooperate with the Secretary of Agriculture of the United States in the administration of this chapter and accept federal assistance and use funds appropriated for the administration of this chapter to pay the state's proportionate share of the cooperative program;

(11) recommend the names of officials and employees of the department to the Secretary of Agriculture of the United States for appointment to the advisory committees provided for in the federal acts;

(12) serve as the representative of the governor for consultation with the Secretary of Agriculture under paragraph (c) of Section 301 of the Federal Meat Inspection Act and Section 5(c) of the federal Poultry Products Inspection Act, unless the governor selects another representative; and

(13) exempt from inspection:

(a) the slaughter and processing of an animal by any person who raises an animal for the person's own use, members of the person's household, employees, or nonpaying guests;

(b) custom exempt slaughter and processing operations;

(c) farm custom slaughter performed by a licensee; and

(d) any other operation, if the exemption:

(i) furthers the purposes of this chapter; and

(ii) conforms to federal acts.

Amended by Chapter 242, 2010 General Session

4-32-9. Additional powers of commissioner.

(1) The commissioner may:

(a) gather and compile information concerning and, to investigate the organization, business, conduct, practices, and management of any person subject to this chapter;

(b) require any person subject to this chapter to file information regarding the person's business or operation as the commissioner requires;

(c) for the purpose of this chapter, at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence, of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation;

(d) require the attendance of witnesses and the production of documentary evidence at any place designated for hearing; in case of disobedience to a subpoena, the commissioner may invoke the aid of any court of competent jurisdiction to compel the attendance of witnesses and the production of documentary evidence; and

(e) order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of the proceeding or investigation; the depositions may be taken before any person with power to administer oaths designated by the commissioner, and the testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent.

(2) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(3) (a) Any person who without just cause neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the

commissioner is guilty of a class A misdemeanor. Any fine imposed may not be less than $500.

(b) Any person that willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or that willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or that neglects or fails to make, or to cause to be made, full, true, and correct entries in those accounts, records, or memoranda, of all facts and transactions appertaining to the business of that person or that willfully removes out of the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or that willfully refuses to submit to the commissioner or to any of the commissioner's authorized agents, for the purpose of inspection and making copies, any documentary evidence of any person subject to this chapter within the person's possession or control is guilty of a class A misdemeanor. Any fine imposed may not be less than $500.

(c) If any person required by this chapter to file any annual or special report fails to do so within the time fixed by the commissioner, and the failure continues for 30 days after notice of default, the person shall forfeit to the state the sum of $10 for each day of the continuance of the failure, which forfeiture is payable into the treasury of this state, and is recoverable in a civil suit in the name of the state brought in the district where the person has a principal office or in any district in which he does business. The various county attorneys, under the direction of the attorney general of this state, shall prosecute for the recovery of the forfeitures. The costs and expenses of prosecution shall be paid out of the appropriation for the expenses of the courts of this state.

Amended by Chapter 296, 1997 General Session

4-32-10. Judicial review of orders enforcing chapter.

(1) Any party aggrieved by an order issued under Subsection 4-32-7(3) or under Subsection 4-32-8(1), (2), or (3) may obtain judicial review.

(2) The district courts have jurisdiction to enforce this chapter, and to prevent and restrain violations of this chapter, and have jurisdiction in all other kinds of cases arising under this chapter.

(3) All proceedings for the enforcement of this chapter, or to restrain violations of this chapter, shall be by and in the name of this state.

Amended by Chapter 161, 1987 General Session

4-32-11. Preparation and slaughter of livestock, poultry, or livestock and poultry products -- Adulterated or misbranded products -- Violation of rule or order.

(1) An animal or meat or poultry product that may be used for human consumption shall not be:

(a) slaughtered or prepared unless it is done in compliance with this chapter's requirements;

(b) sold, transported, offered for sale or transportation, or received for

transportation, if it is adulterated or misbranded, unless it has been inspected and approved; or

(c) subjected to any act while being transported or held for sale after transportation resulting in one of the products becoming adulterated or being misbranded.

(2) A person may not violate any rule or order of the commissioner under Subsection 4-32-7(3) or (6), or Subsection 4-32-8(3), (5), (7), or (14).

Amended by Chapter 242, 2010 General Session

4-32-12. Unauthorized use or possession of official devices, labels, marks, or certificates -- False statements, misrepresentations, and trade secrets.

(1) A person may not cast, print, lithograph, or make any device or label containing or bearing any official mark or simulation of a mark, or any form or simulation of an official certificate unless authorized by the commissioner.

(2) A person may not:

(a) forge any official device, mark, or certificate;

(b) use any official device, mark, or certificate without the authorization of the commissioner;

(c) alter, detach, deface, or destroy any official device, mark, or certificate;

(d) fail to use, detach, deface, or destroy any official device, mark, or certificate as required by this chapter;

(e) knowingly possess any of the following, if it bears any unauthorized, counterfeit, simulated, forged, or altered official mark:

(i) an official device;

(ii) a counterfeit, simulated, forged, or altered official certificate;

(iii) a device;

(iv) a label;

(v) a carcass of any animal, including poultry; or

(vi) a part or product of any animal, including poultry;

(f) knowingly make any false statement in any shipper's certificate, or nonofficial or official certificate;

(g) knowingly represent that any meat or poultry product has been inspected and approved, or exempted, under this chapter when, in fact, it has not; or

(h) use to the person's advantage or reveal any information acquired under the authority of this chapter relating to any matter entitled to protection as a trade secret unless the information is:

(i) revealed to an authorized government representative; or

(ii) ordered by a court in a judicial proceeding.

Amended by Chapter 242, 2010 General Session

4-32-13. Meat or poultry products to be marked or labeled -- Meat or poultry products not intended for human food -- Dead, dying, disabled, or diseased animals.

(1) A person may not sell, transport, offer for sale or transportation, or receive

for transportation, any animal carcasses or parts of such carcasses, or the meat or meat products, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by rules adopted by the department to show the kinds of animals from which they were derived.

(2) A person may not buy, sell, transport, or offer for sale or transportation, or receive for transportation any meat or poultry products that are not intended for human food unless they are denatured or otherwise identified as required by the rules of the department or are naturally inedible by humans.

(3) A person engaged in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, may not buy, sell, transport, offer for sale or transportation, or receive for transportation the animals or parts of carcasses unless the transaction or transportation is made in accordance with rules adopted by the department to assure that the animals or parts of carcasses will be prevented from being used for human food.

Amended by Chapter 242, 2010 General Session

4-32-14. Attempt to bribe state officer or employee -- Acceptance of bribe -- Interference with official duties -- Penalties.

(1) (a) Any person who gives, pays, or offers, directly or indirectly, any money or other thing of value, to any officer or employee of this state who is authorized to perform any duties under this chapter, with the intent to influence the officer or employee in the discharge of his duty, is guilty of a felony of the third degree, and upon conviction, shall be punished by a fine of not more than $5,000 or imprisonment of not more than five years, or both.

(b) An officer or employee of this state authorized to perform duties under this chapter who accepts money, a gift, or other thing of value from any person given with intent to influence his official action, is guilty of a felony of the third degree and shall, upon conviction, be discharged from office, fined in an amount of not more than $5,000, or imprisoned for not more than five years, or both.

(2) (a) Any person who assaults, obstructs, impedes, intimidates, or interferes with any person engaged in the performance of official duties under this chapter, with or without a dangerous or deadly weapon, is guilty of a felony of the third degree and upon conviction shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.

(b) Any person who, in the commission of any violation of Subsection (2) of this section, uses a dangerous weapon as defined in Section 76-1-601, is guilty of a felony of the second degree and upon conviction shall be punished by a fine of not more than $10,000, or by imprisonment for a period of not more than 10 years, or both.

(c) Any person who kills another person engaged in the performance of official duties under this chapter shall be punished as provided in Section 76-5-202.

Amended by Chapter 289, 1997 General Session

4-32-15. Inspection of products placed in containers -- Supervision of

inspector -- Access to establishment.

(1) No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed under the supervision of an inspector.

(2) For purposes of any inspection of products required by this chapter, inspectors authorized by the department shall have access at all times to every part of every establishment required to have inspection whether the establishment is operated or not.

Enacted by Chapter 2, 1979 General Session

4-32-16. Detention of animals or meat or poultry products -- Removal of official marks.

(1) Whenever any meat or poultry product or any product exempted from the definition of a meat or poultry product, or any dead, dying, disabled, or diseased animal, is found by any authorized representative of the commissioner, and there is reason to believe that it is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and passed, or that it has been or is intended to be distributed in violation of this chapter, it may be detained by the representative pending action under Section 4-32-17, and may not be moved by any person from the place at which it is located when so detained, until released by such representative.

(2) All official marks may be required by the representative described in Subsection (1) to be removed from a product or animal described in Subsection (1) before the product is released.

Amended by Chapter 242, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-32-17. Quarantine authorized -- Conditions giving rise to quarantine.

(1) Any meat or poultry product, or any dead, dying, disabled, or diseased animal that is being transported or is held for sale in this state, and that:

(a) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;

(b) is capable of use as human food and is adulterated or misbranded; or

(c) in any other way violates this chapter, shall be seized and quarantined.

(2) Quarantined animals or products shall be condemned and destroyed, except that the owner of the quarantined animals or products may request a hearing within five days, and the commissioner shall, within five days after the request, conduct a hearing to decide whether the quarantined animals or products shall be condemned.

(3) The commissioner's decision under Subsection (2) is final, and all condemned animals or products shall forthwith be destroyed or denatured in the presence of the commissioner or an inspector.

(4) This section does not limit the authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

Amended by Chapter 242, 2010 General Session

4-32-18. Rules for the construction and operation of meat establishments authorized.

(1) For the purposes of administering this chapter and qualifying meat establishments for licenses, the department may adopt sanitary inspection rules and regulations, and all other necessary rules, including those pertaining to the construction, equipment, and facilities of meat establishments.

(2) The rules shall conform with the regulations promulgated under the federal acts.

Amended by Chapter 242, 2010 General Session

4-32-20. Suspension or revocation -- Grounds.

The department may upon its own motion, and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the operation of any meat establishment, and may suspend or revoke the license of the meat establishment upon any of the following grounds:

(1) the license was obtained by any false or misleading statement;

(2) for slaughtering any animal without an antemortem and a postmortem inspection, or for processing any meat or poultry or products of either that have not been inspected and passed, (or exempted) and so identified;

(3) the advertising or publicizing of any false or misleading statements that pertain to the slaughtering, processing, or distribution of animals or meat or poultry products;

(4) the failure to maintain refrigeration, sanitation, or dispose of waste as required by rules of the department; or

(5) the failure to comply with rules of the department pertaining to the disposal of carcasses or parts of carcasses that have been determined to be unfit for human consumption.

Amended by Chapter 242, 2010 General Session

4-32-21. Denial of application for farm custom slaughter license -- Venue for judicial review.

(1) Any applicant whose application for a license to operate a meat establishment or to obtain a farm custom slaughter license is denied may file a request for agency action with the department, requesting a hearing on the issue of denial.

(2) (a) Any person who is aggrieved by an order issued under this section may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceeding is in the district court in the county in which the alleged unlawful activity occurred or, in the case of an order denying a license application, in the county where the applicant resides.

(3) The attorney general's office shall represent the department in any original action or any appeal under this section.

Amended by Chapter 242, 2010 General Session

4-32-22. Animals slaughtered or the meat and poultry products not intended for human use -- No inspection -- Products to be denatured or otherwise identified.

Inspection may not be provided under this chapter at any establishment for the slaughter of animals or the preparation of any meat or poultry products that are not intended for use as human food, but the products shall be denatured or otherwise identified as prescribed by rules of the department before their offer for sale or transportation.

Amended by Chapter 242, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-33-1. Short title.

This chapter shall be known as the "Motor Fuel Inspection Act."

Enacted by Chapter 8, 1981 General Session

4-33-2. Purpose of chapter.

It is the purpose of this chapter to promote the safety and welfare of users of motor fuels in this state and also to promote the orderly marketing of motor fuels.

Enacted by Chapter 8, 1981 General Session

4-33-3. Definition.

As used in this chapter, "motor fuel" means any combustible gas, liquid, matter, or substance which is used in an internal combustion engine for the generation of power.

Enacted by Chapter 8, 1981 General Session

4-33-4. Administrative and enforcement powers of department.

The department shall administer and enforce this chapter and may:

(1) make and enforce such rules, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as it considers necessary for the effective administration and enforcement of this chapter;

(2) acquire and test motor fuel samples to determine compliance with this chapter;

(3) maintain and staff a laboratory to test motor fuel samples;

(4) enter public or private premises during normal working hours to enforce this chapter;

(5) stop and detain any commercial vehicle transporting motor fuel to inspect its contents and applicable documents or to acquire motor fuel samples; and

(6) require that records applicable to this chapter be available for examination and review upon request by the department.

Amended by Chapter 382, 2008 General Session

4-33-5. Prohibitions.

It is unlawful for any person in this state:

(1) to offer for sale, sell, or deliver any motor fuel which fails to meet the standards prescribed by the department;

(2) to advertise or display the price of motor fuel without advertising or displaying the grade of the motor fuel and the type of service when both self service and full service are offered;

(3) to haul or transport motor fuel for the purpose of sale or delivery in this state without an invoice or bill of lading stating the name and address of the owner or person consigning the fuel for transport, the Utah grade of the motor fuel, and the number of gallons consigned.

Enacted by Chapter 8, 1981 General Session

4-33-6. Octane rating determination and posting.

The determination of octane ratings and the posting of the octane on dispensing devices shall be in accord with Federal Trade Commission requirements.

Enacted by Chapter 8, 1981 General Session

4-33-7. Inspection, sampling, testing and analysis of fuels by department.

(1) The department shall periodically sample, inspect, analyze and test motor fuels dispensed in this state and may enter any public premises or vehicle for the purpose of determining compliance with this chapter.

(2) Methods of sampling, testing, analyzing and designating motor fuels shall accord with those specified and published by the American Society for Testing and Materials. The department shall use the latest published standards of the American Society for Testing and Materials.

(3) Upon request the department shall pay the posted price for samples and the person from whom the sample is taken shall give a signed receipt evidencing payment.

(4) Tests and analyses conducted by the department shall be prima facie evidence of the facts shown by such tests in any court proceeding.

Enacted by Chapter 8, 1981 General Session

4-33-8. Locking and sealing of pumps in violation of chapter -- Posting notice -- Removal of sealed fuel -- Resealing.

(1) The department may lock and seal any pump or other dispensing device which is in violation of this chapter. If such action is taken, the department shall post a notice in a conspicuous place on the pump or other dispensing device stating that the device has been sealed by the department and that it is unlawful to break or destroy the seal or to mutilate or alter the notice.

(2) Any person who is aggrieved by the action of the department may advise the department that such person intends to remove the balance of the motor fuel from the tank or other container which contains the sealed fuel. The department, within two working days after the receipt of such notice, shall break the seal or lock for the

container to be emptied.

(3) If the aggrieved party fails to remove the sealed motor fuel within 24 hours after the department breaks the seal, the department may reseal the dispensing device. The seal may not be broken nor the contents of any container removed, except after a subsequent written notice of intent to remove is filed with the department and upon the payment of a service charge determined by the department pursuant to Subsection 4-2-2(2). A notice of intent to remove may be filed on paper or electronically.

Amended by Chapter 9, 2002 General Session

4-33-9. Warrant to enter premises for inspection or sampling.

If admittance is refused to the department either for sampling or for inspection of transport invoices or bills of lading, the department may obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of inspection or taking samples or to examine transport documents.

Enacted by Chapter 8, 1981 General Session

4-33-10. Interstate commerce -- Chapter inapplicable to fuel in transit through state.

This chapter is inapplicable to motor fuel being transported through this state in interstate commerce; provided, that none of the motor fuel is consigned or destined for delivery in the state.

Enacted by Chapter 8, 1981 General Session

4-34-1. Definitions.

For purposes of this chapter:

(1) "Agricultural product" means any fowl, animal, fish, vegetable, or other product or article, fresh or processed, which is customary food, or which is proper food for human consumption.

(2) "Nonprofit charitable organization" means any organization which was organized and is operating for charitable purposes and which meets the requirements of the Internal Revenue Service of the U.S. Department of Treasury that exempt the organization from income taxation under the provisions of the Internal Revenue Code.

(3) "Gleaner" means a person who harvests, for free distribution, an agricultural crop that has been donated by the owner.

Enacted by Chapter 70, 1981 General Session

4-34-2. Donation to charitable organization authorized.

Any person engaged in the business of producing, processing, selling, or distributing any agricultural product may donate, free of charge, any such product which is in a fit condition for use as food for human consumption to a nonprofit charitable organization within the state of Utah.

Enacted by Chapter 70, 1981 General Session

4-34-3. County surplus food collection and distribution system.

To accomplish the purposes of Section 4-34-2, any county may establish and publicize the availability of a surplus food collection and distribution system and may provide information to donee organizations concerning the availability of agricultural products and to donors concerning organizations that desire or need donated agricultural products. Any nonprofit charitable organization needing agricultural products on a regular basis may be listed with the county for the purpose of receiving notice that the products are available.

Enacted by Chapter 70, 1981 General Session

4-34-4. Inspection of donated food.

The county may provide for the inspection of donated agricultural products by the county health officer upon the request of the donee nonprofit charitable organization to determine whether the products are fit for human consumption.

Enacted by Chapter 70, 1981 General Session

4-34-5. Limitation of liability of donor, charitable organization and county.

Except in the event of an injury resulting from gross negligence, recklessness, or intentional conduct, neither a county nor an agency of a county nor a donor of an agricultural product participating in good faith in a food donation program, nor a nonprofit charitable organization receiving, accepting, gleaning, or distributing any agricultural product donated in good faith to it under this chapter shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding for any injury that occurs as a result of any act or the omission of any act, including injury resulting from ingesting the donated agricultural product.

Enacted by Chapter 70, 1981 General Session

4-34-6. Sale or use of donations by employee of public agency or charity prohibited.

An employee of a nonprofit charitable organization or of a public agency may not sell, offer for sale, use, or consume any agricultural product donated or distributed under this chapter.

Amended by Chapter 157, 1990 General Session

4-35-1. Short title.

This chapter is known as the "Insect Infestation Emergency Control Act."

Enacted by Chapter 133, 1985 General Session

4-35-2. Definitions.

As used in this chapter:

(1) "Committee" means the Decision and Action Committee created by and established under this chapter.

(2) "Department" means the Department of Agriculture and Food.

(3) "Insect" means, but is not limited to, grasshopper, range caterpillar, mormon cricket, apple maggot, cherry fruit fly, plum curculio, and cereal leaf beetle.

Amended by Chapter 82, 1997 General Session

4-35-3. Decision and Action Committee created -- Members -- How appointed -- Duties of committee -- Per diem and expenses allowed.

(1) (a) There is created the Decision and Action Committee which consists of not fewer than six members.

(b) One member is the commissioner and one member is appointed to represent the department.

(c) The remaining members of the committee are appointed by the commissioner on an ad hoc basis as necessary from persons directly affected by and involved in the current insect infestation emergency.

(d) The committee is dissolved when the commissioner declares that the insect infestation emergency is over.

(2) The committee shall:

(a) establish a system of priorities for any insect infestation emergency; and

(b) certify to the commissioner any area which requires the establishment of an insect control district in areas of infestation and in which a simple majority of the landowners and lessees whose total production exceeds 50% of the production in that area has agreed to pay proportionate shares of the costs of controlling the insects infesting the area.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

4-35-4. Commissioner to declare emergency -- Powers of commissioner in emergency.

(1) (a) The commissioner, with the consent of the governor, may declare that an insect infestation emergency situation exists which jeopardizes property and resources, and designate the area or areas affected.

(b) The area referred to in Subsection (1)(a) may include federal lands, after notification of the appropriate federal land manager.

(2) The commissioner is authorized, subject to the requirements of Section 4-35-5, to direct all emergency measures the commission considers necessary to alleviate the emergency condition. The commissioner shall:

(a) utilize equipment, supplies, facilities, personnel, and other available resources;

(b) enter into contracts for the acquisition, rental, or hire of equipment, services, materials, and supplies;

(c) accept assistance, services, and facilities offered by federal and local governmental units or private agencies; and

(d) accept on behalf of the state the provisions and benefits of acts of Congress designated to provide assistance.

Amended by Chapter 132, 2002 General Session

4-35-5. Commissioner to act upon certification by committee -- Deposit required.

(1) The commissioner initiates operations to control the insect infestation in the designated area or areas:

(a) upon certification by the committee under Subsection 4-35-4(2); and

(b) upon deposit of the owner's and lessee's projected proportionate share of the costs.

(2) The commissioner and the members of the committee may suspend or terminate control operations upon a determination that the operations will not significantly reduce the insect population in the designated emergency area.

Enacted by Chapter 133, 1985 General Session

4-35-6. Money deposited as dedicated credits -- Balance nonlapsing -- Matching funds allowed.

(1) All money received by the state under this chapter is deposited by the Department of Agriculture and Food as dedicated credits for the purpose of insect control with the state.

(2) The dedicated credits may be used as matching funds for:

(a) participation in programs of the United States Department of Agriculture; and

(b) in contracts with private property owners who own croplands contiguous to infested public rangelands.

Amended by Chapter 391, 2010 General Session

4-35-7. Notice to owner or occupant -- Corrective action required -- Directive issued by department -- Costs -- Owner or occupant may prohibit spraying.

(1) The department or an authorized agent of the department shall notify the owner or occupant of the problem and the available alternatives to remedy the problem. The owner or occupant shall take corrective action within 30 days.

(2) If the owner or occupant fails to take corrective action under Subsection (1), the department may issue a directive for corrective action which shall be taken within 15 days. If the owner or occupant fails to act within the required time, the department shall take the necessary action. The department may recover costs incurred for controlling

an insect infestation emergency from the owner or occupant of the property on whose property corrective action was taken.

(3) Owners or occupants of property may prohibit spraying by presenting an affidavit from their attending physician to the department which states that the spraying as planned is a danger to their health. The department shall provide the owner or occupant with alternatives to spraying which will abate the infestation.

Amended by Chapter 378, 2010 General Session

4-35-8. Persons and activities exempt from civil liability.

No state agency or its officers and employees nor the officers, agents, employees, or representatives of any governmental or private entity acting under the authority granted by this chapter is liable for claims arising out of the reasonable exercise or performance of duties and responsibilities under this chapter.

Enacted by Chapter 133, 1985 General Session

4-35-9. Department to adopt rules.

The department is authorized to adopt and enforce rules to administer this chapter.

Enacted by Chapter 133, 1985 General Session

4-36-1. Compact enacted and entered into.

The "Pest Control Compact" is enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

PEST CONTROL COMPACT

Article I

Findings

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately $10,000,000 from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic, and economic factors, each state may be affected differently by particular species of pests, but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crops and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they

may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

Article II
Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "state" means a state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(b) "requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states;

(c) "responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article;

(d) "pest" means an invertebrate animal, pathogen, parasitic plant, or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value;

(e) "insurance fund" means the pest control insurance fund established pursuant to this compact;

(f) "governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact; and

(g) "executive committee" means the committee established pursuant to Article V (e) of this compact.

Article III
The Insurance Fund

There is established the "Pest Control Insurance Fund" for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain money appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provisions of this compact.

Article IV
The Insurance Fund, Internal Operations and Management

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be considered the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of voters on the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary, and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel, or other merit system laws of any party states, the executive director, or if there is no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The insurance fund may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation, gift, or grants accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may consider desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

Article V

Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and

2. Represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provisions are made therefore within the Federal Government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of money from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

Article VI

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within it borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may require the governing board to authorize expenditures from the

insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use money made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in Item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in Item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of money from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive

committee shall upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive money from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of money from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states, and any other entities concerned.

Article VII

Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof, may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee, held pursuant to Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting, if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

Article VIII

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state except as provided in this Article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in the state and the value of the expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it considers appropriate with respect to the expenditure of money from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may consider necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

Article IX
Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriation shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all money not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of money requested for appropriation by the party states, the governing board shall reduce its budget request on a pro rata basis in such manner as to keep the claims account within the maximum limit. Any money in the claims account by virtue of conditional donations, grants, or gifts shall be included in calculations made pursuant to this paragraph only to the extent that money are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with money available to it under Article IV (g) of this compact, provided that the governing board takes specific action setting aside money prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of money available to it under Article IV (g) hereof, the insurance fund shall not incur any obligation prior to the allotment of money by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

Article X

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of withdrawal.

Article XI

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Enacted by Chapter 191, 1985 General Session

4-36-2. Cooperation with Pest Control Insurance Fund.

Consistent with law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the Insurance Fund established by the Pest Control Compact.

Enacted by Chapter 191, 1985 General Session

4-36-3. Filing of compact.

Pursuant to Article IV (h) of the compact, copies of bylaws and amendments to the compact shall be filed with the Department of Agriculture and Food.

Amended by Chapter 82, 1997 General Session

4-36-4. Compact administrator.

The compact administrator for this state shall be the commissioner of agriculture and food.

Amended by Chapter 82, 1997 General Session

4-36-5. Applications for assistance.

Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the Insurance Fund may be made by the compact administrator for this state, whenever in the compact administrator's judgment the conditions qualifying this state for assistance exist and it would be in the best interest of this state to make a request.

Enacted by Chapter 191, 1985 General Session

4-36-6. Disposition of money from compact insurance fund.

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified under this compact shall have credited to the appropriate account in the state treasury the amount of any payments made to this state to defray the cost of the program, or any part thereof, or as reimbursement thereof.

Enacted by Chapter 191, 1985 General Session

4-36-7. Executive head defined.

As used in the compact, with reference to this state, "executive head" means the governor.

Enacted by Chapter 191, 1985 General Session

4-37-101. Title.

This chapter is known as the "Aquaculture Act."

Enacted by Chapter 153, 1994 General Session

4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.

(1) The Legislature declares that it is in the interest of the people of the state to encourage the practice of aquaculture, while protecting the public fishery resource, in order to augment food production, expand employment, promote economic development, and protect and better utilize the land and water resources of the state.

(2) The Legislature further declares that aquaculture is considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agricultural industry within the state.

Amended by Chapter 378, 2010 General Session

4-37-103. Definitions.

As used in this chapter:

(1) "Aquaculture" means the controlled cultivation of aquatic animals.

(2) (a) (i) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture.

(ii) "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain to, different drainages, are considered separate aquaculture facilities regardless of ownership.

(3) (a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in Subsection (3)(a).

(4) "Fee fishing facility" means a body of water used for holding or rearing fish for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(5) (a) "Private fish pond" means a body of water where privately owned fish are propagated or kept for a noncommercial purpose.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(6) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division of Wildlife Resources, U.S. Fish and Wildlife Service, or an institution of higher education.

(7) "Public fishery resource" means fish produced in public aquaculture facilities and wild and free ranging populations of fish in the surface waters of the state.

Amended by Chapter 69, 2008 General Session

4-37-104. Department's responsibilities.

(1) The department is responsible for:

(a) the marketing and promotion of the state's aquaculture industry; and

(b) enforcing laws and rules made by the Wildlife Board governing species of aquatic animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities.

(2) Subject to the policies and rules of the Fish Health Policy Board, the department shall:

(a) act to prevent the outbreak and act to control the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

(b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to aquatic wildlife, other animals, and humans.

Amended by Chapter 302, 1998 General Session

4-37-105. Responsibilities of Wildlife Board and Division of Wildlife

Resources.

(1) The Wildlife Board and Division of Wildlife Resources are responsible for determining the species of aquatic animals which may be imported into, possessed, and transported within the state.

(2) Subject to the policies and rules of the Fish Health Policy Board, the Wildlife Board and the Division of Wildlife Resources shall:

(a) act to prevent the outbreak and act to control the spread of disease-causing pathogens among aquatic animals in public aquaculture facilities; and

(b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic wildlife, other animals, and humans.

Amended by Chapter 302, 1998 General Session

4-37-106. Cooperative agreements.

In fulfilling their respective responsibilities under this chapter, the department, Division of Wildlife Resources, and Wildlife Board may make memorandums of understanding or enter into other agreements for mutual cooperation.

Enacted by Chapter 153, 1994 General Session

4-37-108. Prohibited activities.

(1) Except as provided in this chapter, in the rules of the department made pursuant to Section 4-37-109, rules of the Fish Health Policy Board made pursuant to Section 4-37-503, or in the rules of the Wildlife Board governing species of aquatic animals which may be imported into, possessed, or transported within the state, a person may not:

(a) acquire, import, or possess aquatic animals intended for use in an aquaculture or fee fishing facility;

(b) transport aquatic animals to or from an aquaculture or fee fishing facility;

(c) stock or propagate aquatic animals in an aquaculture or fee fishing facility; or

(d) harvest, transfer, or sell aquatic animals from an aquaculture or fee fishing facility.

(2) If a person commits an act in violation of Subsection (1) and that same act constitutes wanton destruction of protected wildlife as provided in Section 23-20-4, the person is guilty of a violation of Section 23-20-4.

Amended by Chapter 302, 1998 General Session

4-37-109. Department to make rules.

(1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) specifying procedures for the application and renewal of certificates of registration for operating an aquaculture or fee fishing facility; and

(b) governing the disposal or removal of aquatic animals from an aquaculture or fee fishing facility for which the certificate of registration has lapsed or been revoked.

(2) (a) The department may make other rules consistent with its responsibilities set forth in Section 4-37-104.

(b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section.

Amended by Chapter 378, 2010 General Session

4-37-110. Inspection of records and facilities.

(1) The following records and information shall be maintained by an aquaculture or fee fishing facility for a period of two years and shall be available for inspection by a department representative during reasonable hours:

(a) records of purchase, acquisition, distribution, and production histories of aquatic animals;

(b) certificate of registration; and

(c) valid identification of stocks, including origin of stocks.

(2) Department representatives may conduct pathological, fish culture, or physical investigations at any aquaculture, public aquaculture, or fee fishing facility during reasonable hours.

Amended by Chapter 378, 2010 General Session

4-37-111. Prohibited sites.

Aquaculture and fee fishing facilities may not be developed on:

(1) natural lakes;

(2) natural flowing streams; or

(3) reservoirs constructed on natural stream channels.

Enacted by Chapter 153, 1994 General Session

4-37-112. Screens.

(1) Each aquaculture and fee fishing facility shall be equipped with screening or another device to prevent the movement of fish into or out of the facility.

(2) The department may conduct site inspections to assure compliance with Subsection (1).

Enacted by Chapter 153, 1994 General Session

4-37-201. Certificate of registration required to operate an aquaculture facility.

(1) A person may not operate an aquaculture facility without first obtaining a certificate of registration from the department.

(2) (a) Each application for a certificate of registration to operate an aquaculture facility shall be accompanied by a fee.

(b) The fee shall be established by the department in accordance with Section 63J-1-504.

(3) The department shall coordinate with the Division of Wildlife Resources:

(a) on the suitability of the proposed site relative to potential impacts on adjacent aquatic wildlife populations; and

(b) in determining which species the holder of the certificate of registration may propagate, possess, transport, or sell.

(4) The department shall list on the certificate of registration the species which the holder may propagate, possess, transport, or sell.

Amended by Chapter 183, 2009 General Session

4-37-202. Acquisition of aquatic animals for use in aquaculture facilities.

(1) Live aquatic animals intended for use in aquaculture facilities may be purchased or acquired only from:

(a) aquaculture facilities within the state that have a certificate of registration and health approval number;

(b) public aquaculture facilities within the state that have a health approval number; or

(c) sources outside the state that are health approved as provided in Part 5.

(2) A person holding a certificate of registration for an aquaculture facility shall submit annually to the department a record of each purchase of live aquatic animals and transfer of live aquatic animals into the facility. This record shall include the following information:

(a) name, address, and health approval number of the source;

(b) date of transaction; and

(c) number and weight by species.

(3) The records required by Subsection (2) shall be submitted to the department before a certificate of registration is renewed or a subsequent certificate of registration is issued.

Amended by Chapter 378, 2010 General Session

4-37-203. Transportation of aquatic animals to or from aquaculture facilities.

(1) Any person holding a certificate of registration for an aquaculture facility may transport the live aquatic animals specified on the certificate of registration to the facility or to any person who has been issued a certificate of registration to possess those aquatic animals.

(2) Each transfer or shipment of live aquatic animals from or to an aquaculture facility within the state shall be accompanied by documentation of the source and destination of the fish, including:

(a) name, address, certificate of registration number and health approval number of the source;

(b) number and weight being shipped, by species; and

(c) name, address, and certificate of registration number of the destination.

Amended by Chapter 378, 2010 General Session

4-37-204. Sale of aquatic animals from aquaculture facilities.

(1) (a) Except as provided by Subsection (1)(b), a person holding a certificate of registration for an aquaculture facility may take an aquatic animal as approved on the certificate of registration from the facility at any time and offer the aquatic animal for sale; however, live aquatic animals may be sold within Utah only to a person who has been issued a certificate of registration to possess the aquatic animal.

(b) A person who owns or operates an aquaculture facility may stock a live aquatic animal in a private fish pond if the person:

(i) obtains a health approval number for the aquaculture facility;

(ii) provides the private fish pond's owner with a brochure published by the Division of Wildlife Resources that summarizes the statutes and rules related to a private fish pond and the possession of an aquatic animal;

(iii) inspects the private fish pond to verify that the private fish pond is in compliance with Subsections 23-15-10(2) and (3)(c); and

(iv) stocks the species, strain, and reproductive capability of aquatic animal authorized by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the private fish pond is located.

(2) An aquatic animal sold or transferred by the owner or operator of an aquaculture facility shall be accompanied by the seller's receipt that contains the following information:

(a) date of transaction;

(b) name, address, certificate of registration number, health approval number, and signature of seller;

(c) number and weight of aquatic animal by:

(i) species;

(ii) strain; and

(iii) reproductive capability; and

(d) name and address of the receiver.

(3) (a) A person holding a certificate of registration for an aquaculture facility shall submit to the department an annual report of each sale of live aquatic animals or each transfer of live aquatic animals to:

(i) another aquaculture facility; or

(ii) a fee fishing facility.

(b) The report shall contain the following information:

(i) name, address, and certificate of registration number of the seller or supplier;

(ii) number and weight by species;

(iii) date of sale or transfer; and

(iv) name, address, phone number, and certificate of registration number of the receiver.

(4) (a) A person who owns or operates an aquaculture facility shall submit to the Division of Wildlife Resources an annual report of each sale or transfer of a live aquatic animal to a private fish pond.

(b) The report shall contain:

(i) the name, address, and health approval number of the person;

(ii) the name, address, and phone number of the private fish pond's owner or operator;

(iii) the number and weight of aquatic animal by:
(A) species;
(B) strain; and
(C) reproductive capability;
(iv) date of sale or transfer;
(v) the private fish pond's location; and
(vi) verification that the private fish pond was inspected and is in compliance with Subsections 23-15-10(2) and (3)(c).
(5) The reports required by Subsections (3) and (4) shall be submitted before:
(a) a certificate of registration is renewed or a subsequent certificate of registration is issued for an aquaculture facility in the state; or
(b) a health approval number is issued for an out-of-state source.

Amended by Chapter 378, 2010 General Session

4-37-301. Certificate of registration required to operate a fee fishing facility.

(1) A person may not operate a fee fishing facility without first obtaining a certificate of registration from the department.
(2) (a) Each application for a certificate of registration to operate a fee fishing facility shall be accompanied by a fee.
(b) The fee shall be established by the department in accordance with Section 63J-1-504.
(3) The department shall coordinate with the Division of Wildlife Resources:
(a) on the suitability of the proposed site relative to potential impacts on adjacent aquatic wildlife populations; and
(b) in determining which species the holder of the certificate of registration may possess or transport to or stock into the facility.
(4) The department shall list on the certificate of registration the species which the holder may possess or transport to or stock into the facility.
(5) A person holding a certificate of registration for an aquaculture facility may also operate a fee fishing facility without obtaining an additional certificate of registration, if the fee fishing facility:
(a) is in a body of water meeting the criteria of Section 4-37-111 which is connected with the aquaculture facility;
(b) contains only those aquatic animals specified on the certificate of registration for the aquaculture facility; and
(c) is designated on the certificate of registration for the aquaculture facility.

Amended by Chapter 183, 2009 General Session

4-37-302. Acquisition of aquatic animals for use in fee fishing facilities.

(1) Live aquatic animals intended for use in fee fishing facilities may be purchased or acquired only from:
(a) aquaculture facilities within the state that have a certificate of registration and health approval number;

(b) public aquaculture facilities within the state that have a health approval number; or

(c) sources outside the state that are health approved pursuant to Part 5.

(2) (a) A person holding a certificate of registration for a fee fishing facility shall submit to the department an annual report of all live fish purchased or acquired.

(b) The report shall contain the following information:

(i) name, address, and certificate of registration number of the seller or supplier;

(ii) number and weight by species;

(iii) date of purchase or transfer; and

(iv) name, address, and certificate of registration number of the receiver.

(c) The report shall be submitted to the department before a certificate of registration is renewed or subsequent certificate of registration is issued.

Amended by Chapter 378, 2010 General Session

4-37-303. Transportation of live aquatic animals to fee fishing facilities.

(1) Any person holding a certificate of registration for a fee fishing facility may transport the live aquatic animals specified on the certificate of registration to the facility.

(2) Each transfer or shipment of live aquatic animals to a fee fishing facility within the state shall be accompanied by documentation of the source and destination of the fish, including:

(a) name, address, certificate of registration number and health approval number of the source;

(b) number and weight being shipped by species; and

(c) name, address, and certificate of registration number of the destination.

Amended by Chapter 378, 2010 General Session

4-37-304. Sale or transfer of live aquatic animals from fee fishing facilities prohibited.

Live aquatic animals may not be sold or transferred from fee fishing facilities.

Enacted by Chapter 153, 1994 General Session

4-37-305. Fishing license not required to fish at fee fishing facilities -- Transportation of dead fish.

(1) A fishing license is not required to take fish from fee fishing facilities.

(2) To transport dead fish from fee fishing facilities the fish shall be accompanied by the seller's receipt containing the following information:

(a) species and number of fish;

(b) date caught;

(c) certificate of registration number of the fee fishing facility; and

(d) name, address, and telephone number of the seller.

Amended by Chapter 378, 2010 General Session

4-37-401. Certificate of registration required to import aquatic animals for aquaculture or fee fishing facilities.

(1) A person may not import aquatic animals classified as controlled species by rules of the Wildlife Board into the state for use in aquaculture or fee fishing facilities without first obtaining a certificate of registration from the department.

(2) The department shall:

(a) coordinate with the Division of Wildlife Resources in determining which species the holder may import into the state; and

(b) specify those species on the certificate of registration.

(3) A person may not import species into the state that are not listed on the certificate of registration.

Enacted by Chapter 153, 1994 General Session

4-37-402. Documentation required to import aquatic animals.

Any aquatic animals classified as controlled species by rules of the Wildlife Board that are imported into the state for use in aquaculture or fee fishing facilities shall be accompanied by documentation indicating the following:

(1) the health approval number assigned by the department to the source facility;

(2) common or scientific names of the imported animals;

(3) name and address of the consignor and consignee;

(4) origin of shipment;

(5) final destination;

(6) number or pounds shipped;

(7) purpose for which shipped;

(8) method of transportation; and

(9) any other information required by the department.

Amended by Chapter 378, 2010 General Session

4-37-501. Health approval -- Exceptions.

(1) (a) Except as provided in Subsections (2) and (3), live aquatic animals may be acquired, purchased, sold, or transferred only from sources that have been health approved by the department or the Division of Wildlife Resources in accordance with policy and rules of the Fish Health Policy Board and assigned a health approval number.

(b) (i) The department shall be responsible for certifying as health approved:

(A) aquaculture facilities;

(B) fee fishing facilities; and

(C) any out-of-state source.

(ii) The Division of Wildlife Resources shall be responsible for certifying as health approved:

(A) public aquaculture facilities within the state;

(B) private ponds within the state; and

(C) wild populations of aquatic animals in waters of the state.

(2) (a) The Division of Wildlife Resources shall waive the health approval requirement for wild populations of aquatic animals pursuant to guidelines of the Fish Health Policy Board.

(b) The Fish Health Policy Board shall develop guidelines for waiving the health approval requirement for wild populations of aquatic animals which:

(i) are listed by the federal government as threatened or endangered;

(ii) are listed by the Division of Wildlife Resources as species of special concern; or

(iii) exist in such low numbers that lethal sampling for health approval could threaten the population.

(c) When wild populations of aquatic animals are exempted from the health approval requirement, precautions shall be taken to protect other wild populations and any other aquatic animals from undetected pathogens.

(3) Subsection (1) does not apply to the sale or transfer of live aquatic animals to an out-of-state destination approved by the receiving state.

(4) In certifying a public aquaculture facility as health approved, the Division of Wildlife Resources may use:

(a) employees or contractors to conduct the inspection required by Section 4-37-502; and

(b) sampling or testing procedures that are more thorough or sensitive in detecting prohibited pathogens than the procedures required by rule.

Amended by Chapter 191, 2007 General Session

4-37-502. Inspections -- Health approval report -- Report for quarantine facility -- Qualifications of inspectors -- Notification of department.

(1) (a) Except as provided by Subsection (1)(b), approval shall be based upon inspections carried out in accordance with standards and rules of the Fish Health Policy Board made pursuant to Section 4-37-503.

(b) An owner or operator of an aquaculture facility that is under quarantine or whose health approval has been canceled or denied prior to July 1, 2007 may seek health approval without submitting or complying with a biosecurity plan required by rule by submitting a new health inspection report to the department.

(2) (a) The inspections shall be done by an individual who has received certification from the American Fisheries Society as a fish health inspector.

(b) An inspection of an aquaculture facility may not be done by an inspector who is employed by, or has pecuniary interest in, the facility being inspected.

(c) The department shall post on its website a current list of:

(i) certified fish health inspectors; and

(ii) approved laboratories to which a fish health inspector may send the samples collected during the inspections required by this section.

(d) (i) If the fish health inspector conducting the inspection is not an employee of the department, the owner or operator of the aquaculture facility shall notify the department of the date and time of the inspection at least five business days before the date on which the inspection will occur.

(ii) The department may be present for the inspection.

(3) To receive a health approval number, inspection reports and other evidence of the disease status of a source facility shall be submitted to the agency responsible for certifying the source as health approved pursuant to Section 4-37-501.

Amended by Chapter 378, 2010 General Session

4-37-503. Fish Health Policy Board.

(1) There is created within the department the Fish Health Policy Board which shall establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.

(2) The Fish Health Policy Board shall:

(a) in accordance with Subsection (6)(b), determine procedures and requirements for certifying a source of aquatic animals as health approved, including:

(i) the pathogens for which inspection is required to receive health approval;

(ii) the pathogens that may not be present to receive health approval; and

(iii) standards and procedures required for the inspection of aquatic animals;

(b) establish procedures for the timely reporting of the presence of a pathogen and disease threat;

(c) create policies and procedures for, and appoint, an emergency response team to:

(i) investigate a serious disease threat;

(ii) develop and monitor a plan of action; and

(iii) report to:

(A) the commissioner of agriculture and food;

(B) the director of the Division of Wildlife Resources; and

(C) the chair of the Fish Health Policy Board; and

(d) develop a unified statewide aquaculture disease control plan.

(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:

(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and

(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.

(4) (a) (i) The governor shall appoint the following seven members to the Fish Health Policy Board:

(A) one member from names submitted by the Department of Natural Resources;

(B) one member from names submitted by the Department of Agriculture and Food;

(C) one member from names submitted by a nonprofit corporation that promotes sport fishing;

(D) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry;

(E) one member from names submitted by the Department of Natural Resources and the Department of Agriculture and Food;

(F) one member from names submitted by a nonprofit corporation that promotes

sport fishing; and

(G) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry.

(ii) The members appointed under Subsections (4)(a)(i)(E) through (G) shall be:

(A) (I) faculty members of an institution of higher education; or

(II) qualified professionals; and

(B) have education and knowledge in:

(I) fish pathology;

(II) business;

(III) ecology; or

(IV) parasitology.

(iii) At least one member appointed under Subsections (4)(a)(i)(E) through (G) shall have education and knowledge about fish pathology.

(iv) (A) A nominating person shall submit at least three names to the governor.

(B) If the governor rejects all the names submitted for a member, the recommending person shall submit additional names.

(b) Except as required by Subsection (4)(c), the term of office of board members shall be four years.

(c) Notwithstanding the requirements of Subsection (4)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The board members shall elect a chair of the board from the board's membership.

(f) The board shall meet upon the call of the chair or a majority of the board members.

(g) An action of the board shall be adopted upon approval of the majority of voting members.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) (a) The board shall make rules consistent with its responsibilities and duties specified in this section.

(b) Except as provided by this chapter, all rules adopted by the Fish Health Policy Board shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section.

(c) (i) Rules of the department and Fish Health Policy Board pertaining to the control of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those provisions.

(ii) The Fish Health Policy Board shall promptly amend rules that are

inconsistent with the current suggested procedures published by the American Fisheries Society.

(d) The Fish Health Policy Board may waive a requirement established by the Fish Health Policy Board's rules if:

(i) the rule specifies the waiver criteria and procedures; and

(ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal populations.

Amended by Chapter 286, 2010 General Session
Amended by Chapter 378, 2010 General Session

4-37-601. Enforcement and penalties.

(1) Any violation of this chapter is a class B misdemeanor and may be grounds for revocation of the certificate of registration or denial of any future certificate of registration as determined by the department.

(2) A violation of any rule made under this chapter may be grounds for revocation of the certificate of registration or denial for future certificates of registration as determined by the department.

Enacted by Chapter 153, 1994 General Session

4-37-602. Adjudicative proceedings -- Presiding officer.

(1) Adjudicative proceedings under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) The revocation of an aquaculture facility's certificate of registration, the denial of an aquaculture facility's future certificate of registration, and a denial or cancellation of an aquaculture facility's health approval number is a state agency action governed by Title 63G, Chapter 4, Administrative Procedures Act.

(3) (a) An owner or operator of an aquaculture facility may ask for an agency review, as provided by Section 63G-4-301, of an agency action specified in Subsection (2).

(b) The presiding officer, as defined in Section 63G-4-103, conducting the agency review shall consist of three members as follows:

(i) the person representing sport fishermen, appointed under Subsection 4-37-503(4)(a)(i)(C);

(ii) one person representing the aquaculture industry, appointed by the governor from names submitted by a nonprofit corporation, as defined in Section 16-6a-102, that promotes the efficient production, distribution, and marketing of aquaculture products and the welfare of all persons engaged in aquaculture; and

(iii) one person, appointed by the governor, who is knowledgeable about aquatic diseases and is employed by an institution of higher education.

(c) If the governor rejects all the names submitted under Subsection (3)(b)(ii), the recommending nonprofit corporation shall submit additional names.

(d) The final decision of the presiding officer shall be adopted upon approval of at least two of the members.

(e) The term for the member listed in Subsection (3)(b)(i) shall be the same as

provided in Section 4-37-503.

(f) The term for the members appointed under Subsections (3)(b)(ii) and (iii) shall be four years.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

4-38-1. Short title.

This chapter shall be known as the "Utah Horse Regulation Act."

Enacted by Chapter 296, 1992 General Session

4-38-2. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Horse Racing Commission created by this chapter.

(2) "Executive director" means the executive director of the commission.

(3) "Mixed meet" means a race meet that includes races by more than one breed of horse.

(4) "Race meet" means the entire period of time for which a licensee has been approved by the commission to hold horse races.

(5) "Racetrack facility" means a racetrack within Utah approved by the commission for the racing of horses, including the track surface, grandstands, clubhouse, all animal housing and handling areas, and other areas in which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials.

(6) "Recognized race meet" means a race meet recognized by a national horse breed association.

(7) "Utah bred horse" means a horse that is sired by a stallion standing in Utah at the time the dam was bred.

Amended by Chapter 64, 1993 General Session

4-38-3. Utah Horse Racing Commission.

(1) (a) There is created within the Department the Utah Horse Racing Commission.

(b) (i) The commission shall consist of five members who shall be U.S. citizens, Utah residents, and qualified voters of Utah.

(ii) Each member shall have an interest in horse racing.

(c) (i) The governor shall appoint the members of the commission.

(ii) The governor shall appoint commission members from a list of nominees

submitted by the commissioner of agriculture and food.

(d) (i) The members of the commission shall be appointed to four-year terms.

(ii) A commission member may not serve more than two consecutive terms.

(e) Each member shall hold office until his or her successor is appointed and qualified.

(f) Vacancies on the commission shall be filled by appointment by the governor for the unexpired term.

(g) (i) A member may be removed from office by the governor for cause after a public hearing.

(ii) Notice of the hearing shall fix the time and place of the hearing and shall specify the charges.

(iii) Copies of the notice of the hearing shall be served on the member by mailing it to the member at his last known address at least 10 days before the date fixed for the hearing.

(iv) The governor may designate a hearing officer to preside over the hearing and report his findings to the governor.

(2) (a) The members of the commission shall annually elect a commission chair.

(b) Three members of the commission shall constitute a quorum for the transaction of any business of the commission.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(4) All claims and expenditures made under this chapter shall be first audited and passed upon by the commission and when approved shall be paid in the manner provided by law for payment of claims against the state.

(5) Any member of the commission who has a personal or private interest in any matter proposed or pending before the commission shall publicly disclose this fact to the commission and may not vote on the matter.

(6) Any member of the commission who owns or who has any interest or whose spouse or member of his immediate family has any interest in a horse participating in a race shall disclose that interest and may not participate in any commission decision involving that race.

Amended by Chapter 461, 2013 General Session

4-38-4. Powers and duties of commission.

(1) The commission shall:

(a) license, regulate, and supervise all persons involved in the racing of horses as provided in this chapter;

(b) license, regulate, and supervise all recognized race meets held in this state under the terms of this chapter;

(c) cause the various places where recognized race meets are held to be visited and inspected at least once a year;

(d) assist in procuring public liability insurance coverage from a private insurance company for those licensees unable to otherwise obtain the insurance required under this chapter;

(e) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern race meets, including rules:

(i) to resolve scheduling conflicts and settle disputes among licensees;

(ii) to supervise, discipline, suspend, fine, and bar from events all persons required to be licensed by this chapter; and

(iii) to hold, conduct, and operate all recognized race meets conducted pursuant to this chapter;

(f) determine which persons participating, directly or indirectly, in recognized race meets require licenses;

(g) announce the time, place, and duration of recognized race meets for which licenses shall be required; and

(h) establish reasonable fees for all licenses provided for under this chapter.

(2) The commission may:

(a) grant, suspend, or revoke licenses issued under this chapter;

(b) impose fines as provided in this chapter;

(c) access criminal history record information for all licensees and commission employees; and

(d) exclude from any racetrack facility in this state any person who the commission considers detrimental to the best interests of racing or any person who violates any provisions of this chapter or any rule or order of the commission.

Amended by Chapter 382, 2008 General Session

4-38-5. Executive director.

The commission shall be under the general administrative control of an executive director appointed by the commissioner with the concurrence of the commission. The executive director shall serve at the pleasure of the commissioner.

Enacted by Chapter 296, 1992 General Session

4-38-6. Public records.

All records of the commission shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

4-38-7. Licenses -- Fees -- Duties of licensees.

(1) The commission may grant licenses for participation in racing and other activities associated with racetracks.

(2) The commission shall establish a schedule of fees for the application for and renewal and reinstatement of all licenses issued under this chapter.

(3) Each person holding a license under this chapter shall comply with this chapter and with all rules promulgated and all orders issued by the commission under

this chapter.

(4) Any person who holds a recognized race meet or who participates directly or indirectly in a recognized race meet without being first licensed by the commission as required under this chapter and any person violating any provisions of this chapter is subject to penalties under Section 4-2-15.

Amended by Chapter 322, 2007 General Session

4-38-8. Stewards.

(1) (a) The commission may delegate authority to enforce its rules and this chapter to three stewards employed by the commission at each recognized race meet. At least one of them shall be selected by the commission.

(b) Stewards shall exercise reasonable and necessary authority as designated by rules of the commission including the following:

(i) enforce rules of the commission;

(ii) rule on the outcome of events;

(iii) evict from an event any person who has been convicted of bookmaking, bribery, or attempts to alter the outcome of any race through tampering with any animal that is not in accordance with this chapter or the rules of the commission;

(iv) levy fines not to exceed $2,500 for violations of rules of the commission, which fines shall be reported daily and paid to the commission within 48 hours of imposition and notice;

(v) suspend licenses not to exceed one year for violations of rules of the commission, which suspension shall be reported to the commission daily; and

(vi) recommend that the commission impose fines or suspensions greater than permitted by Subsections (1)(b)(iv) and (v).

(2) If a majority of the stewards agree, they may impose fines or suspend licenses.

(3) (a) Any fine or license suspension imposed by a steward may be appealed in writing to the commission within five days after its imposition. The commission may affirm or reverse the decision of a steward or may increase or decrease any fine or suspension.

(b) A fine imposed by the commission under this section or Section 4-38-9 may not exceed $10,000.

(c) Suspensions of a license may be for any period of time but shall be commensurate with the seriousness of the offense.

Amended by Chapter 324, 2010 General Session

4-38-9. Investigation -- License denial and suspension -- Grounds for revocation -- Fines.

(1) The commission or its board of stewards of a recognized race meet, upon their own motion may, and upon verified complaint in writing of any person shall, investigate the activities of any licensee within the state or any licensed person upon the premises of a racetrack facility.

(2) The commission or board of stewards may fine, suspend a license, or deny

an application for a license.

(3) The commission may revoke a license, if the licensee has committed any of the following violations:

(a) substantial or willful misrepresentation;

(b) disregard for or violation of any provisions of this chapter or of any rule promulgated by the commission;

(c) conviction of a felony under the laws of this or any other state or of the United States, a certified copy of the judgment of the court of conviction of which shall be presumptive evidence of the conviction in any hearing held under this section;

(d) fraud, willful misrepresentation, or deceit in racing;

(e) falsification, misrepresentation, or omission of required information in a license application to the commission;

(f) failure to disclose to the commission a complete ownership or beneficial interest in a horse entered to be raced;

(g) misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of racing animals;

(h) failure to comply with any order or rulings of the commission, the stewards, or a racing official pertaining to a racing matter;

(i) ownership of any interest in or participation by any manner in any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise;

(j) being unqualified by experience or competence to perform the activity permitted by the license possessed or being applied for;

(k) employment or harboring of any unlicensed person on the premises of a racetrack facility;

(l) discontinuance of or ineligibility for the activity for which the license was issued;

(m) being currently under suspension or revocation of a racing license in another racing jurisdiction;

(n) possession on the premises of a racetrack facility of:

(i) firearms; or

(ii) a battery, buzzer, electrical device, or other appliance other than a whip which could be used to alter the speed of a horse in a race or while working out or schooling;

(o) possession, on the premises of a racetrack facility, by a person other than a licensed veterinarian of a hypodermic needle, hypodermic syringe, or other similar device that may be used in administering medicine internally in a horse, or any substance, compound items, or combination of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a horse unless specifically authorized by a commission-approved veterinarian;

(p) cruelty to or neglect of a horse;

(q) offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of such act immediately to the stewards, the patrol judges, or the commission;

(r) causing, attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of such act

immediately to the stewards, the patrol judges, or the commission;

(s) entering, or aiding and abetting the entry of, a horse ineligible or unqualified for the race entered;

(t) willfully or unjustifiably entering or racing any horse in any race under any name or designation other than the name or designation assigned to the animal by and registered with the official recognized registry for that breed of animal, or willfully setting on foot, instigating, engaging in, or in any way furthering any act by which any horse is entered or raced in any race under any name or designation other than the name or designation duly assigned by and registered with the official recognized registry for the breed of animal; or

(u) racing at a racetrack facility without having that horse registered to race at that racetrack facility.

(4) (a) Any person who fails to pay in a timely manner any fine imposed pursuant to this chapter shall pay, in addition to the fine due, a penalty amount equal to the fine.

(b) Any person who submits to the commission a check in payment of a fine or license fee requirement imposed pursuant to this chapter, which is not honored by the financial institution upon which it is drawn, shall pay, in addition to the fine or fee due, a penalty amount equal to the fine.

Amended by Chapter 4, 1993 General Session
Amended by Chapter 64, 1993 General Session

4-38-10. Race meets -- Licenses -- Fairs.

(1) Each person making application for a license to hold a race meet under this chapter shall file an application with the commission which shall set forth the time, place, and number of days the race meet will continue, and other information the commission may require.

(2) A person who has been convicted of a crime involving moral turpitude may not be issued a license to hold a race meet.

(3) (a) The license issued shall specify the kind and character of the race meet to be held, the number of days the race meet shall continue, and the number of races per day.

(b) The licensee shall pay in advance of the scheduled race meet to the commission a fee of not less than $25. If unforeseen obstacles arise which prevent the holding or completion of any race meet, the license fee held may be refunded to the licensee if the commission considers the reason for failure to hold or complete the race meet sufficient.

(4) (a) Any unexpired license held by any person who violates any of the provisions of this chapter, or who fails to pay to the commission any fees required under this chapter, shall be subject to cancellation and revocation by the commission.

(b) This cancellation shall be made only after a summary hearing before the commission, of which seven days notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation. At the hearing, the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

(5) (a) Fair boards or fair districts that conduct race meets in connection with

regularly scheduled annual fairs shall be exempt from payment of the fees provided in this section, unless they sponsor a race in which the speed indexes are officially recognized under breed requirements.

(b) All fair boards and fair meets shall be limited to 14 race days, unless otherwise permitted by a unanimous vote of the commission.

(6) The exemption from the payment of fees under Subsection (5)(a) does not apply to those qualifying for official speed index races.

Amended by Chapter 64, 1993 General Session

4-38-11. Stimulation or retardation of animals prohibited -- Tests.

(1) Any person who uses or permits the use of any mechanical or electrical device, or drug of any kind, to stimulate or retard any animal in any race authorized by this chapter, except as prescribed by the commission, is guilty of a class A misdemeanor.

(2) A commission member or race steward may cause tests to be made that they consider proper to determine whether any animal has been stimulated or retarded. Tests performed in furtherance of this section shall be conducted by or under the supervision of a licensed Utah veterinarian.

Enacted by Chapter 296, 1992 General Session

4-38-12. Bribery and touting prohibited.

Any person who gives or promises or attempts to give, or any person who receives or agrees to receive or attempts to receive, any money, bribe, or thing of value with intent to influence any person to dishonestly umpire, manage, direct, judge, preside, officiate at, or participate in any race conducted under this chapter with the intent or purpose that the result of the race will be affected or influenced thereby, is guilty of a felony of the third degree and subject to a fine of not more than $10,000.

Enacted by Chapter 296, 1992 General Session

4-38-13. Race meet escrow.

Each race meet licensee shall deposit in escrow all added money and money from payment races in a FDIC bank that has received prior approval from the commission. All payment deposits shall be made in a timely manner determined by the commission, and each licensee shall provide proof of deposits as required by the commission.

Enacted by Chapter 296, 1992 General Session

4-38-14. Hearings.

(1) Except as otherwise provided in this section, all proceedings before the commission or its hearing officer with respect to the denial, suspension, or revocation of licenses or the imposition of fines shall be conducted pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(2) These proceedings shall be held in the county where the commission has its office or in any other place the commission designates. The commission shall notify the applicant or licensee by mailing, by first class mail, a copy of the written notice required to the last address furnished by the application or licensee to the commission at least seven days in advance of the hearing.

(3) The commission may delegate its authority to conduct hearings with respect to the denial or suspension of licenses or the imposition of a fine to a hearing officer.

(4) Proceedings before the board of stewards need not be governed by the procedural or other requirements of the Administrative Procedures Act, but rather shall be conducted in accordance with rules adopted by the commission.

(5) The commission and the board of stewards may administer oaths and affirmations, sign and issue subpoenas, order the production of documents and other evidence, and regulate the course of the hearing pursuant to rules adopted by it.

(6) Any person aggrieved by a final order or ruling issued by a board of stewards may appeal the order or ruling to the commission pursuant to procedural rules adopted by the commission. The aggrieved party may petition the commission for a stay of execution pending appeal to the commission.

Amended by Chapter 382, 2008 General Session

4-38-15. Gambling disclaimer.

Nothing in this chapter may be construed to legalize or permit any form of gambling.

Enacted by Chapter 296, 1992 General Session

4-38-16. Horse Racing Account created -- Contents -- Use of account money.

(1) There is created within the General Fund a restricted account known as the Horse Racing Account.

(2) The Horse Racing Account consists of:

(a) license fees collected under this chapter;

(b) revenue from fines imposed under this chapter; and

(c) interest on account money.

(3) Upon appropriation by the Legislature, money from the account shall be used for the administration of this chapter, including paying the costs of:

(a) public liability insurance;

(b) stewards;

(c) veterinarians; and

(d) drug testing.

Enacted by Chapter 64, 1993 General Session

4-39-101. Title.

This chapter is known as the "Domesticated Elk Act."

Enacted by Chapter 302, 1997 General Session

4-39-102. Definitions.

As used in this chapter:

(1) "Domesticated elk" means elk of the genus and species cervus elaphus, held in captivity and domestically raised for commercial purposes.

(2) "Domesticated elk facility" means a facility where domesticated elk are raised.

(3) "Domesticated elk product" means any carcass, part of a carcass, hide, meat, meat food product, antlers, or any part of a domesticated elk.

Enacted by Chapter 302, 1997 General Session

4-39-103. Department's responsibilities.

The department is responsible for enforcing laws and rules relating to:

(1) the importation, possession, or transportation of domesticated elk into the state or within the state;

(2) the inspection of domesticated elk facilities;

(3) preventing the outbreak and controlling the spread of disease-causing pathogens among domesticated elk in domesticated elk facilities;

(4) preventing the spread of disease-causing pathogens from domesticated elk to wildlife, other animals, or humans; and

(5) if necessary, quarantining any domesticated elk pursuant to Chapter 31, Control of Animal Disease.

Amended by Chapter 331, 2012 General Session

4-39-104. Advisory council.

(1) The department shall establish an advisory council to give advice and make recommendations on policies and rules adopted pursuant to this chapter.

(2) The advisory council shall consist of eight members appointed by the commissioner of agriculture to four-year terms as follows:

(a) two members, recommended by the executive director of the Department of Natural Resources, shall represent the Department of Natural Resources;

(b) two members shall represent the Department of Agriculture, one of whom shall be the state veterinarian;

(c) two members shall represent the livestock industry, one of whom shall represent the domesticated elk industry; and

(d) two members, recommended by the executive director of the Department of Natural Resources from a list of candidates submitted by the Division of Wildlife Resources, shall represent wildlife interests.

(3) Notwithstanding the requirements of Subsection (2), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement

shall be appointed for the unexpired term.

(5) A majority of the advisory council constitutes a quorum. A quorum is necessary for the council to act.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

4-39-105. Prohibited activities.

(1) Except as provided in this title or in the rules of the department made pursuant to this title, a person may not:

(a) acquire, import, or possess domesticated elk intended for use in a domesticated elk facility;

(b) transport domesticated elk to or from a domesticated elk facility;

(c) propagate domesticated elk in a domesticated elk facility; or

(d) harvest, transfer, possess, or sell domesticated elk or domesticated elk products from a domesticated elk facility.

(2) Releasing domesticated elk into the wild is prohibited.

Amended by Chapter 378, 1999 General Session

4-39-106. Department to make rules.

(1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, after considering the recommendations of the advisory council:

(a) specifying procedures for the application and renewal of licenses for operating a domesticated elk facility;

(b) governing the disposal or removal of domesticated elk from a domesticated elk facility for which the license has lapsed or been revoked;

(c) setting standards and requirements for operating a domesticated elk facility;

(d) setting health requirements and standards for health inspections; and

(e) governing the possession, transportation, and accompanying documentation of domesticated elk carcasses.

(2) The department may make other rules consistent with its responsibilities set forth in Section 4-39-103.

Amended by Chapter 382, 2008 General Session

4-39-107. Powers of state veterinarian.

The state veterinarian shall:

(1) set up periodic or ongoing surveillance programs considered necessary for:

(a) the recognition, control, monitoring, and elimination of infectious diseases

and parasites; and

(b) monitoring genetic purity; and

(2) quarantine or make any disposition of diseased animals that he or she considers necessary for the control or eradication of that disease.

Enacted by Chapter 302, 1997 General Session

4-39-108. Deposit of fees.

The department shall deposit all fees collected under this chapter into the Utah Livestock Brand and Anti-Theft Account created in Section 4-24-24.

Enacted by Chapter 302, 1997 General Session

4-39-201. Fencing, posts, and gates.

(1) Each domesticated elk facility shall, at a minimum, meet the requirements of this section and shall be constructed to prevent the movement of domesticated elk into or out of the facility.

(2) (a) All perimeter fences and gates shall be:

(i) a minimum of eight feet above ground level; and

(ii) constructed of hi-tensile steel.

(b) At least the bottom four feet shall be mesh with a maximum mesh size of 6" x 6".

(c) The remaining four feet shall be mesh with a maximum mesh size of 12" x 6".

(3) The minimum wire gauge shall be 14-1/2 gauge for a 2 woven hi-tensile fence.

(4) All perimeter gates at the entrances of domesticated elk handling facilities shall be locked, with consecutive or self-closing gates when animals are present.

(5) Posts shall be:

(a) (i) constructed of treated wood which is at least four inches in diameter; or

(ii) constructed of a material with the strength equivalent of Subsection (5)(a)(i);

(b) spaced no more than 30 feet apart if one stay is used, or 20 feet apart if no stays are used; and

(c) at least eight feet above ground level and two feet below ground level.

(6) Stays, between the posts, shall be:

(a) constructed of treated wood or steel;

(b) spaced no more than 15 feet from any post; and

(c) at least eight feet above ground level, and two feet below ground level.

(7) Corner posts and gate posts shall be braced wood or its strength equivalent.

Amended by Chapter 378, 2010 General Session

4-39-202. General facility requirements.

(1) (a) Internal handling facilities shall be capable of humanely restraining an individual animal and to facilitate:

(i) the application or reading of any animal identification;

(ii) the taking of blood or tissue samples; and

(iii) any other required or necessary testing procedure.

(b) A domesticated elk facility shall be properly constructed to protect inspection personnel while they are handling the domesticated elk.

(2) The domesticated elk facility owner shall provide ample signage around the facility indicating that it is a domesticated elk facility, so that the public is put on notice that the animals are not wild elk.

Enacted by Chapter 302, 1997 General Session

4-39-203. License required to operate a domesticated elk facility.

(1) A person may not operate a domesticated elk facility without first obtaining a license from the department.

(2) (a) Each application for a license to operate a domesticated elk facility shall be accompanied by a fee.

(b) The fee shall be established by the department in accordance with Section 63J-1-504.

(3) Each applicant for a domesticated elk facility license shall submit an application providing all information in the form and manner as required by the department.

(4) (a) No license shall be issued until the department has inspected and approved the facility.

(b) The department shall:

(i) notify the Division of Wildlife Resources at least 48 hours prior to a scheduled inspection so that a Division of Wildlife Resources representative may be present at the inspection; and

(ii) provide the Division of Wildlife Resources with copies of all licensing and inspection reports.

(5) Each separate location of the domesticated elk operation shall be licensed separately.

(6) (a) If a domesticated elk facility is operated under more than one business name from a single location, the name of each operation shall be listed with the department in the form and manner required by the department.

(b) The department shall require that a separate fee be paid for each business name listed.

(c) If a domesticated elk facility operates under more than one business name from a single location, the facility shall maintain separate records.

(7) Each person or business entity with an equity interest in the domesticated elk shall be listed on the application for license.

(8) Each domesticated elk facility license shall expire on July 1 in the year following the year of issuance.

(9) Each licensee shall report to the department, in the form and manner required by the department, any change in the information provided in the licensee's application or in the reports previously submitted, within 15 days of each change.

(10) Licenses issued pursuant to this section are not transferable.

Amended by Chapter 183, 2009 General Session

4-39-204. Inspection of domesticated elk.

Following the issuance of a license, the licensee shall have each domesticated elk inspected within 60 days following the stocking of the facility.

Enacted by Chapter 302, 1997 General Session

4-39-205. License renewal.

(1) To renew a license, the licensee shall submit to the department:

(a) an inspection certificate showing that:

(i) the domesticated elk, on the domesticated elk facility, have been inspected and certified by the department for health, proof of ownership, and genetic purity; and

(ii) the facility has been properly maintained as provided in this chapter during the immediately preceding 60-day period; and

(b) a record of each purchase of domesticated elk and transfer of domesticated elk into the facility, which shall include the following information:

(i) name, address, and health approval number of the source;

(ii) date of transaction; and

(iii) number and sex.

(2) (a) If the application for renewal is not received on or before April 30, a late fee will be charged.

(b) A license may not be renewed until the fee is paid.

(3) If the application and fee for renewal are not received on or before July 1, the license may not be renewed, and a new license shall be required.

Amended by Chapter 378, 2010 General Session

4-39-206. Records to be maintained.

(1) The following records and information shall be maintained by a domesticated elk facility for a period of five years:

(a) records of purchase, acquisition, distribution, and production histories of domesticated elk;

(b) records documenting antler harvesting, production, and distribution; and

(c) health certificates and genetic purity records.

(2) For purposes of carrying out the provisions of this chapter and rules promulgated under this chapter and, at any reasonable time during regular business hours, the department shall have free and unimpeded access to inspect all records required to be kept.

(3) The department may make copies of the records referred to in this section.

Amended by Chapter 378, 2010 General Session

4-39-207. Inspection of facilities.

(1) The department may conduct pathological or physical investigations at any domesticated elk facility to ensure compliance with this chapter.

(2) For purposes of carrying out the provisions of this chapter and rules promulgated under this chapter and, at any reasonable time during regular business hours, the department shall have free and unimpeded access to inspect all buildings, yards, pens, pastures, and other areas in which any domesticated elk are kept, handled, or transported.

(3) The department shall notify the Division of Wildlife Resources prior to an inspection so that a Division of Wildlife Resources representative may be present at the inspection.

Enacted by Chapter 302, 1997 General Session

4-39-301. Genetic purity requirements -- Proof of source.

As part of any inspection for licensing or renewing the license of a domesticated elk facility, or for the importation, transportation, or change of ownership of any domesticated elk, the department shall require:

(1) proof of genetic testing to ensure the purity of the domesticated elk herds and prevent the introduction of red deer or hybrid nonnative species into domesticated elk herds in Utah by showing evidence of the purity of live animals, gametes, eggs, sperm, or other genetic material; and

(2) proof that the domesticated elk originates from a legal source as provided in Section 4-39-302.

Enacted by Chapter 302, 1997 General Session

4-39-302. Acquisition of domesticated elk for use in domesticated elk facilities.

Domesticated elk intended for use in domesticated elk facilities shall meet all health and genetic requirements of this chapter.

Amended by Chapter 378, 2010 General Session

4-39-303. Importation of domesticated elk.

(1) A person may not import domesticated elk into the state for use in domesticated elk facilities without first obtaining:

(a) an entry permit from the state veterinarian's office; and

(b) a domesticated elk facility license from the department.

(2) The entry permit shall include the following information and certificates:

(a) a health certificate with an indication of the current health status;

(b) proof of genetic purity as required in Section 4-39-301;

(c) the name and address of the consignor and consignee;

(d) proof that the elk are tuberculosis and brucellosis free;

(e) the origin of shipment;

(f) the final destination;

(g) the total number of animals in the shipment; and

(h) any other information required by the state veterinarian's office or the department.

(3) No domesticated elk will be allowed into the state that originates east of the 100 degree meridian, to prevent introduction of the meningeal worm.

Enacted by Chapter 302, 1997 General Session

4-39-304. Marking domesticated elk.

(1) Each domesticated elk, not previously tattooed, shall be marked by either a tattoo, as provided in Subsection (2), or by a microchip, as provided in Subsection (3):

(a) within 30 days of a change of ownership; or

(b) in the case of newborn calves, within 15 days after being weaned, but in any case, no later than September 15.

(2) If a domesticated elk is identified with a tattoo, the tattoo shall:

(a) be placed peri-anally or inside the right ear; and

(b) consist of a four-digit herd number assigned by the department over a three-digit individual animal number assigned by the owner.

(3) If a domesticated elk is identified with a microchip, it shall be placed in the right ear.

Amended by Chapter 378, 2010 General Session

4-39-305. Transportation of domesticated elk to or from domesticated elk facilities.

Any domesticated elk transferred to or from a domesticated elk facility within the state shall be:

(1) accompanied by a brand inspection certificate specifying the following:

(a) the name, address, and facility license number of the source;

(b) number, sex, and individual identification number; and

(c) name, address, and facility license number of the destination;

(2) accompanied by proof of genetic purity as provided in Section 4-39-301; and

(3) inspected by the department as provided in Section 4-39-306.

Amended by Chapter 378, 2010 General Session

4-39-306. Inspection prior to movement, sale, removal of antlers, or slaughter.

(1) Each domesticated elk facility licensee shall have the domesticated elk inspected by the department prior to any transportation, sale, removal of antlers, or slaughter.

(2) Any person transporting or possessing domesticated elk or domesticated elk products shall have the appropriate brand inspection certificate in his or her possession.

Amended by Chapter 378, 2010 General Session

4-39-307. Inspections -- Qualifications of inspectors.

Health certification shall be based upon inspections carried out in accordance

with standards specified by the department.

Enacted by Chapter 302, 1997 General Session

4-39-401. Escape of domesticated elk -- Liability.

(1) It is the owner's responsibility to try to capture any domesticated elk that may have escaped.

(2) The escape of a domesticated elk shall be reported immediately to the state veterinarian or a brand inspector of the Department of Agriculture who shall notify the Division of Wildlife Resources.

(3) If the domesticated elk is not recovered within 72 hours of the escape, the Department of Agriculture, in conjunction with the Division of Wildlife Resources, shall take whatever action is necessary to resolve the problem.

(4) The owner shall reimburse the state or a state agency for any reasonable recapture costs that may be incurred in the recapture or destruction of the animal.

(5) Any escaped domesticated elk taken by a licensed hunter in a manner which complies with the provisions of Title 23 and the rules of the Wildlife Board shall be considered to be a legal taking and neither the licensed hunter, the state, nor a state agency shall be liable to the owner for the killing.

(6) The owner shall be responsible to contain the domesticated elk to ensure that there is no spread of disease from domesticated elk to wild elk and that the genetic purity of wild elk is protected.

Enacted by Chapter 302, 1997 General Session

4-39-402. Removal of wild elk -- Liability.

(1) Upon discovery of wild elk in a domesticated elk facility, the licensee shall immediately notify the Division of Wildlife Resources who shall remove the wild elk.

(2) The state or a state agency is not liable for disease or genetic purity problems of domesticated elk which may be attributed to wild elk.

Enacted by Chapter 302, 1997 General Session

4-39-501. Enforcement and penalties.

(1) Any violation of this chapter is a class B misdemeanor and may be grounds for revocation of the license or denial of any future license as determined by the department.

(2) A violation of any rule made under this chapter may be grounds for revocation of the license or denial for future licenses as determined by the department.

Enacted by Chapter 302, 1997 General Session

4-39-502. Adjudicative proceedings.

Adjudicative proceedings under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

4-40-101. Title.

This chapter is known as the "Cat and Dog Community Spay and Neuter Program Restricted Account Act."

Renumbered and Amended by Chapter 124, 2011 General Session

4-40-102. Cat and Dog Community Spay and Neuter Program Restricted Account -- Interest -- Use of contributions and interest.

(1) There is created within the General Fund the Cat and Dog Community Spay and Neuter Program Restricted Account.

(2) The account shall be funded by contributions deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account in accordance with Section 59-10-1310.

(3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account shall earn interest.

(b) Interest earned on the Cat and Dog Community Spay and Neuter Program Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account.

(4) The Department of Agriculture shall distribute contributions and interest deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account to one or more organizations that:

(a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or

(b) operate as a city or county animal shelter.

(5) (a) An organization described in Subsection (4) may apply to the department to receive a distribution in accordance with Subsection (4).

(b) An organization that receives a distribution from the department in accordance with Subsection (4):

(i) shall expend the distribution only to spay or neuter dogs and cats:

(A) owned by persons having low incomes; and

(B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act; and

(ii) may not expend the distribution for any administrative cost relating to an expenditure authorized by Subsection (5)(b)(i).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules:

(i) providing procedures and requirements for an organization to apply to the department to receive a distribution in accordance with Subsection (4); and

(ii) to define what constitutes a person having a low income.

Renumbered and Amended by Chapter 124, 2011 General Session